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THE
LAW OF
INNS, HOTELS AND BOARDING HOUSES,
A TREATISE UPON THE RELATION
—OF—
HOST AND GUEST.

BY
SAMUEL H. WANDELL,
OF THE SYRACUSE BAR. ✓

*"Who'er has traveled life's dull round,
Where'er his stages may have been,
May sigh to think that he has found
His warmest welcome at an Inn."*

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WHOSE UNIFORM COURTESY AND FAIRNESS HAVE WON THE UNIVERSAL
ESTEEM OF THE BAR.

THIS VOLUME IS RESPECTFULLY INSCRIBED BY

THE AUTHOR.



PREFACE.

There have been several works published upon the law of inns, but so long ago that the editions are out of print, and it is difficult to procure a copy of any of them. The subject has never received the attention that it deserves at the hands of an American author. Several English writers, such as Bacon and Willcock, have compiled treatises on this subject, the work of the latter appearing in 1829. Wharton, Moncrief and Tidswell have also written upon the innkeeper's rights and obligations, but these are all far behind the present advanced state of jurisprudence, and are not in conformity with modern legislation. The latest work issued is a legal recreation by Mr. Rogers, of the Canadian bar, in which he has interwoven many of the leading cases referring to innkeepers in an ingenious narrative form, which represents the author taking an extended bridal tour, stopping at wayside inns, and discoursing frequently upon the relations of innkeepers and guests. While this work is pleasing and instructive, it does not meet the requirements of the practicing lawyer.

The extended legislation upon the rights, duties and liabilities of inn and boarding-house keepers, the numerous cases arising in which either these statutes

are judicially construed or the ancient customs of the realm as incorporated in the rules of the common law depended upon for guidance, demonstrate the usefulness of a work of this character, which covers the ground more completely than the various works on bailments have attempted.

In this book the author has endeavored to trace the growth of inns from their origin to the present time, and to illustrate, to some extent, the customs on which the laws regulating inns, hotels and taverns are founded, as well as the changes which the progress of events and the development of commercial interests have rendered necessary. The duties and responsibilities of the innkeeper, the rights and obligations of the guest and boarder, and the relations existing between boarding-house keepers and their patrons, are discussed at length.

The various statutes relating to inns and boarding-houses are given in full, and the cases referring to the several acts are cited in their appropriate order. In the citation of cases for this volume nearly all the reported cases of other States have been referred to, together with the leading English cases on the subject.

The chapter upon the liability of sleeping car companies is thought to be properly inserted, for the reason that there have been various attempts made to show that the proprietors of such cars are in reality the keepers of common inns.

The author has not endeavored to compile a work upon the Excise Laws, but has only given such statutes as necessarily apply to hotels and inns. As the privilege of selling excisable liquors is only incidental to the right of keeping hotels, and not necessarily connected with it, and as a license for keeping hotels is now permitted to be granted without giving the applicant the right to sell liquors, it was not considered essential to treat of the Excise Laws in connection with the rights and liabilities of innkeepers, except to add a chapter on the Civil Damage Act.

This work is submitted to the profession with the belief that it will be found a useful book of reference, saving the labor of examining the various reports and text-books in order to ascertain the established doctrine upon the subjects treated in its pages, which has been a task of no little difficulty to

THE AUTHOR.

May 10th, 1888.

*White Memorial Building,
Syracuse, N. Y.*

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LAWS OF INNS.

THE LAW

— OF —

Inns, Hotels and Boarding Houses.

A TREATISE UPON THE RELATION OF HOST
AND GUEST.

CHAPTER I.

HISTORY OF INNS.

Doctor Johnson once said, "there is nothing which has yet been contrived by man, by which so much happiness has been produced, as by a good tavern or inn." When we consider the importance of inns in the business and commercial intercourse of men and countries, the thousands of persons who are daily fed and lodged under the care and hospitality of "public entertainers," the necessity of the inn to the development and prosperity of any country, we may form some conception of the importance of that branch of jurisprudence which defines the duties and responsibilities of the innkeeper on the one hand, and

the rights and privileges of the guest on the other. Many interesting legal questions are involved in these relations, and frequent litigations have arisen on the subject.

Before proceeding to discuss these relations from their legal aspect, it may not be uninteresting to consider briefly the origin and history of inns, hotels and taverns, in order that we may the better understand the reason for the law which establishes the innkeeper's liabilities and duties.

HOSPITALITY OF THE ANCIENTS.

It is impossible to state when and where the first inn was established, so gradual has been the progress in the advancement of "a place for the entertainment of man and beast" from the humble tents of the nomads of the desert, where the travel-stained pilgrim might find rest and refuge, up to the magnificent hotel of the nineteenth century with its story upon story of princely furnished apartments, its luxurious appointments, its aggregation of a whole town beneath a single roof. Herodotus, the "Father of History," who is also called "Father of Lies," gives to the Lydians the honor of establishing the first hotel as well as the first drinking shop. But whether among the Lydians or among some other people, the place of public entertainment was first established, we know that at one time, in what is properly termed "The Golden Age," in all ancient countries, it was considered a sacred duty to provide the best entertainment for all strangers without compensation.

The Greeks considered every person who was traveling as a guest sent directly from Jupiter, and

entertained him accordingly. In the *Encyclopædia Britannica*, under the title of *Hospitum*, we find the following: "The power the Greeks possessed of traveling safely among the Greek States depended on the feeling which made hospitality a matter of religion, and looked on strangers as under the protection of Zeus Xenius. A stranger was received and protected during his stay. Violation of the duty of hospitality was likely to provoke the wrath of the Gods; but it does not appear that anything beyond this religious sanction existed to guard the rights of a traveler. There is, however, no ground for the common statement that a stranger was *ipso facto* considered as an enemy. The roads were all sacred; he who passed over them was the guest of the land; he found along all their courses statues of the tutelary deity of the road, generally Hermes; and the offerings of food, &c., in front of these he was at liberty to appropriate. When the guest parted from his host he was often presented with gifts, and sometimes a die was broken between them. Each took a part, a family connexion was established, and the broken die served as a symbol of recognition; thus the members of each family found in the other hosts and protectors in case of need. As the foreigner was not recognized by the law of the State in which he traveled, he could appear in a court of justice only through his host. Similar customs seem to have existed among the Italian races." At this time there appeared to be a sort of universally acknowledged law that every stranger had the right to a place of rest and refuge whenever and wherever he might journey among civilized people, without compensation.

This was in the heroic period when the fervid imaginations of men peopled rocks, streams and forests with innumerable deities.

CHANGE IN ANCIENT CUSTOMS.

After the Trojan war, after the Crusades and other wars, when men had fought in bloody strifes and had learned to offer more petitions to Mars than to Jupiter, there seems to have been a change in this custom of providing free entertainment to strangers. In the course of time men became more selfish and mercenary; commercial interest began to develop rapidly; people traveled more upon business and less upon pilgrimages, and naturally enough their views changed accordingly regarding the requirements of hospitality. With this change in the customs of the people there evolved, as a matter of necessity, a class of persons who made it their business to provide for the entertainment and comfort of their fellow-men, and thus the "inn-keeper" found a place and a welcome in the hearts of the people.

GROWTH OF INNS.

With the advancement of the Roman Empire inns were introduced into many countries where they were not known before. Nowhere in Europe did they so soon obtain a respectable footing as in England. In Moritz's *Travels in England in 1782*, he tells us it was considered a great breach of decorum for a guest to refuse to drink his landlord's health, and how eminently respectable that worthy personage was regarded by the common people.

In *Michalet's History of France* we are informed

that in France the hotel was, at an early day, the palace or dwelling house of a prince or lord, in which he was accustomed to entertain travelers and strangers, and the inn in England seems originally to have been the town-house of a nobleman, bishop or other distinguished personage, in which he resided and entertained his followers when he attended court. Thus Warwick, the King-maker, whilst he resided in London, a city which he loved and courted, kept open house for the humbler sort of people and free board for all comers, roasting six oxen for every meal, so that each guest might carry off as much meat with him as he could stick upon a large dagger; and such was his hospitality, that it was a saying current in his time that thirty thousand men were fed by him on his various domains and in his numerous castles. As the commons grew in importance, common inns took the place of ducal and baronial halls, till, by degrees, the hospitable monastery and the castle of the nobleman were no longer frequented by the traveler as a place of entertainment and rest upon his journey; so that, finally, the old hospitality was succeeded by the age of commerce and civil freedom.

Throughout all Oriental countries "*Khans*" were established along the highways of travel, while in the cities "*caravanseries*" were built for the accommodation of travelers. It is evident that in Bible times inns were known and established throughout Palestine and the adjoining countries, as they are several times mentioned in the Scriptures, and in the stable of an establishment of this nature the infant Jesus was born in Bethlehem of Judea.

EARLY CUSTOMS IN ENGLAND.

An interesting account of the manner in which inns were conducted in England in the early history of that country is given in the following extracts :

"Of our Inns and Thorow-faires," referring to the time of Queen Elizabeth, (chap. 16, 2 *Holingshed's Chronicle*, 246,) "those townes that we call thorowfares have great and sumptuous innes builded in them for the receiving of such travelers and strangers as pass to and fro. The manner of harboring therein is not like that of other countries, in which the host or goodman of the house doth chalenge a lordlie authoritie over his guests, but cleane otherwise, sith everie man may use his inne as his own house in England, and have for his monie how great or little varietie of vittels, and what other service himselfe shall think expedient to call for. Our innes are also very well furnished with naperie, bedding and tapestrie, especially with naperie; for beside the linnen used at the tables, which is commonly washed dailie, is such and so much as belongeth unto the estate and calling of the guest. The comer is sure to lie in cleane sheets, wherein no man hath been lodged since they came from the laundresse, or out of the water wherein they were last washed. If the traveler have a horsse, his bed doth cost him nothing, but if he go on foot he is sure to paie a pennie for the same; but whether he be horseman or footman, if his chamber be over appointed he may carry the kaie with him, as if his owne house so long as he lodgeth there. If he lose aught whilst he abideth in the inne, the host is bound by a general custome to

restorye the damages, so that there is no greater security anie where for travelers than in the greatest innes of England. Their horssees in like sort are walked, dressed and looked unto by certain hostlers or hired servants, appointed at the charges of the goodman of the house, who in hope of extraordinarie reward will deal verie diligentlie after outward appearance in this their function and calling. Herein nevertheless are manie of them blameworthy, in that they do not onlie deceive the beast oftentimes of his allowance by sundrie meanes, except their owners looke well to them ; but also make such packs with slipper merchants which hunt after preie (for what place is sure from evill and wicked persons) that manie an honest-man is spoiled of his goods as he travelteth to and fro, in which fact also the counsell of the tapsters or drawers of drink, and chamberleins is not seldom behind or wanting. Certes I believe not that chapman or traveler is robbed by the waie without the knowledge of some of them, for when he cometh into the inne, and alighteth from his horsse, the hostler forthwith is verie busie to take downe his budget or capcase in the yard from his sadle bow, which he peiseth in his hand to feel the weight thereof ; or if he misse of his pitch, when the guest hath taken up his chamber, the chamberleine that looketh to the making of the beds, will be sure to remove it from the place where the owner hath set it as if to set it more convenientlie some where else, whereby he getteth an inkling whether it be monie or other short wares, and thereof giveth warning to such od ghests as hunt the house and are of his confederacies to the utter undoing of many an honest yeoman as he jour-

nieth by the waie. The tapster in like sort for his part doth marke his behaviour, and what plentie of monie he draweth when he paieth the shot, to the like end ; so that it shall be a hard matter to escape all their subtile practices. Some think it a gay matter to commit their budgets at their coming to the goodman of the house ; but whereby they oft bewaaie themselves. For albeit their monie be safe for the time that it is in his hands [for you shall not hear that a man is robbed in his inne] yet after their departure the host can make no warrantise of the same, sith his protection extendeth no further than the gate of his owne house ; and there cannot be a surer token unto such as prie and watch for those booties, than to see anie ghest delivere his capcase in such manner. In all our innes we have plentie of ale, beere and sundrie kinds of wine, and such is the capacitie of some of them that they are able to lodge two hundred or three hundred persons, and their horssees at ease, and thereto with a verie short warning make such provision for their diet, as to him that is unacquainted with all may seem incredible. Howbeit of all in England there are no worse innes than in London, and yet manie are there far better than the best that I have heard of in anie foreign countrie, if all circumstances be duly considered. But to leave this and go in hand with my purpose, I will here set theme a table of the best thorowfarries and townes of greatest travele in England, in some of which are twelve or thirteen such innes at the least, as I before did speake of, and it is a world to see how each owner of them contendeth with other for goodnesse of intertainment of their guests, as above finesse and change of linnen,

furniture of bedding, beautie of roomes, service at the table, costlinesse of plate, strengthe of drink, varietie of wines, or well [being] of horsses. Finallie there is not so much ommitted among them as the gorgeousness of their inne signes at their doors, wherein some do consume thirtie or fortie pounds, a mere vanitie in my opinion, but so vaine will they needs be, and that not onlie to give some outward token of the inne keeper's wealth, but also to procure good ghests to the frequenting of their houses in hope there to be well used."

SYNONYMOUS TERMS.

The terms, "inn," "tavern," and "hotel," may now be said to be used synonymously, 'but in the law of England there appeared to be a marked distinction. Thus, a "tavern" was defined as a house in which persons are regaled with wines and other liquors, but not with the more substantial entertainment of the victualing house. "The word, "hotel," was said to mean, strictly speaking, a house in which travelers and other casual guests were provided with lodgings but not with food, and an "inn," signified a house in which they were supplied with food and lodging for themselves and their horses.³

DERIVATION OF "TAVERN."

The English word "tavern" is probably derived from the Roman *taberna diversoria*, or *caupona*, used to distinguish the best of Roman inns from the inferior *popinæ*. It was remarked in a leading case

1, *People vs. Jones* 54 N. Y., 311. *St. Louis vs. Siegrist*, 46 Mo., 593;

2, *Jones vs. Osborne*, 2 Chit. 486,

3. *Willcock on Inns*, (A. D. 1829), p. 1;

that in its popular acceptation the word tavern conveys the idea of a place where liquors are sold. In its legal sense this idea has been frequently but not always recognized. In tracing the historical meaning of tavern, it was said that the original employment of the keeper of a tavern was to sell wine alone ; but in the process of time these original distinct employments became confounded. The seller of wines began to supply food and lodging for the wayfaring man, and hence the word tavern came to mean pretty much the same as inn, at a period certainly as far back as the days of Elizabeth.¹

MEANING OF "TAVERN."

There seems to be a conflict of decisions among the courts in this country as to what is meant by the word tavern. In Missouri it was held to include all hotels and houses that entertain and accommodate the public for compensation, whether liquors are sold or not.² In Kentucky a license to "keep tavern" authorizes the sale of spirituous liquors to be drank on the premises or elsewhere.³ In Alabama the courts have held that a license to keep tavern did not include a license to sell liquors.⁴ In New York it was held no license can be required for keeping tavern unless the keeper thereof included in his business the sale of liquors by retail,⁵ and in Georgia a tavern keeper is not obliged to take out a license because he

1, *State vs. Chambylyss*. { 1 Cheeves (S. C.) 222,
 { 34 Am. Dec., 593;
2, *City St. Louis vs. Siegrist*, 46 Mo., 593;
3, *Commonwealth vs. Kamp* 14 B. Mon., 385;
4, *State vs. Cloud*, 6 Alab. 630;
5, *Overseers vs. Warner*, 3 Hill 150., but see *ante* INNS;

did not in addition to food and lodgings sell liquors.¹ In New Hampshire it is said that while the sale of liquors is a part of the common business of a tavern keeper it is not necessarily so.² In Ohio the court was equally divided as to whether a person who received and entertained guests but did not sell liquors or keep them on hand could be convicted of the offence of keeping a *tavern* without license, but the conviction was affirmed.³ In a later case in that State it was held that a license to keep a tavern carried the right to sell liquor and keep a house of entertainment.⁴ In a case where defendant was convicted of unlawfully retailing spirituous liquors, although he held a tavern license, the conviction was reversed upon appeal.⁵

DERIVATION OF "INN."

The word "*inn*" is doubtless of Chaldaic origin, literally signifying "to pitch a tent," and it is now properly applied to all houses of entertainment.⁶ The Saxons spelled this word with an additional letter, *inne*, while the ancient Icelanders wrote it *inni*, meaning house.

DERIVATION OF "HOTEL."

The word "hotel" is of more recent origin. It was not commonly used in this sense in England until about the beginning of the present century, and the old-fashioned people in America at the present day seem to prefer the more homely expression of

- 1, *Sonner vs. Welborn*, 7 Ga., 296;
- 2, *State vs. Fletcher*, 5 N. H., 258;
- 3, *Curtis vs. State*, 5 Ohio, 326;
- 4, *Hirn vs. State*, 1 Ohio St., 18;
- 5, *State vs. Chambyless*, 1 Cheeves, 222;
- 6, *Wharton on Innkeepers*;

"tavern" when speaking of a house for public entertainment. The term hotel was used in France much earlier than in England. Many good authorities claim that this word is derived from the French *hotel*, and originally meant a place for the entertainment of lords and titled personages, and on that account has always been used to designate a respectable house of entertainment. Other authorities claim that it is a contraction of the word *hostel*. It is certain that the words *hostel*, *hostellerie* and *hostellerie*, were frequently used by old English writers, but it should be remembered that this was at a time when the English tongue was greatly corrupted by Norman French, one of the many innovations made by William the Conqueror. It is also possible that the French word *hostel*, Spanish *hosteria* and Italian *osteria* are all derived from the Latin word *hospes*, which means a stranger who is treated as a guest ; also he who treats others as guests, a host.

The word *hostler* originally signified the keeper of an inn who usually took charge of the horses of his guests.

In an able opinion written by Judge Daly, he gives an interesting history of the derivation of the word hotel.¹ He says: "The word is of French origin, being derived from the Latin word *hospes*, a word having a double signification, as it was used by the Romans both to denote a stranger who lodges at the house of another, as well as the master of a house who entertains travelers or guests. Among the Romans it was a universal custom for the wealthier classes to extend the hospitality of their house not

1, Cromwell vs. Stevens, 2 Daly, 15:

only to their friends and connections when they went to a city, but to respectable travelers generally. They had inns, but they were kept by slaves, and were places of resort for the lower orders, or for the accommodation of such travelers as were not in condition to claim the hospitality of the better classes. On either side of the spacious mansions of the wealthy patricians were smaller apartments known as the *hospitum*, a place for the entertainment of strangers, and the word *hospes* was a term to designate the owner of such a mansion, as well as the guest whom he received. This custom of the Romans prevailed in the earlier part of the Middle Ages. From the ninth century, traveling was difficult and dangerous. There was little security except within castles or walled towns. The principal public road had been destroyed by centuries of continuous war, and such thoroughfares as existed were infested by roving bands, who lived exclusively by plunder. In such a state of things there could be little traveling, and consequently the few inns to be found were rather dens to which robbers resorted to carouse and divide their spoils than places for the entertainment of travelers. The effect of a condition of society like this, was to make hospitality not only a social but a religious duty, and in the monasteries, and in all great religious establishments provision was made for the gratuitous entertainment of wayfarers and travelers. Either a separate building, or an apartment within the monastery, was devoted exclusively to this purpose, which was in charge of an officer called the hostler, who received the traveler and conducted him to this apartment, which was fitted up with beds, where he was

allowed to tarry for two days, and to have his meals in the refectory, while, if he journeyed upon horseback, provender was provided by the hostler for his beast in the stables. (Citing *Fosbrooke's, Monarchism*, 238, 3d ed.; *Davies*, 2, 769.) In many countries this apartment or great hall of the monastery retained the original Latin name of *hospitum*, but in France the word was blended with *hospes*, and changed into *hospice*, and it afterward underwent another change. As civilization advanced and the nobility of France deserted their strong castles for spacious and costly residences in the towns, they erected their mansions upon a scale sufficiently extensive to enable them to discharge this great duty of hospitality, as is still, or was very recently, the custom among the nobility and wealthier classes in Russia, and in some of the northern countries of Europe. Borrowing by analogy from an existing word, and to distinguish it from the guest house of the monastery, every such guest house or mansion was called a *hostel*, and by the mutation and attrition to which these words are subject in use, the *s* was dropped from the word, and it became *hotel*. As traveling and intercourse increased, the duty upon the nobility of entertaining respectable strangers became too onerous a burden, and establishments in which this class of persons could be entertained by paying for their accommodations sprung up in the cities, towns and upon the leading public roads, which, to distinguish them from the great mansions or *hostels* of the wealthy, and at the same time to denote that they were superior to the *auberge* or *cabaret*, were called *hotelleries*, a name which has been in use in France for several centuries, and is still in

use to some extent as a common term for inns of the better class, while the word hotel, in France, has long ceased to be confined to its original signification, and has become a word of the most extensive meaning,"

ENGLISH SYSTEM OF LICENSING

The old English system of licensing taverns and inns has doubtless formed the precedent for our present excise laws. A brief review of its leading features may not be unprofitable.

Any one keeping a house in which liquors were to be sold to be drank on the premises was required to obtain a license from the justices of the peace, who performed similar duties to those now imposed by statute upon the Excise Commissioners. The justices of every division were required to hold a general licensing meeting for the granting of licenses in every division of every county and riding, and in every division of the county of Lincoln, and in every hundred of every county not being in such division, and in every liberty and division of liberty, county of a town or city. These special sessions of justices were held annually, and notice of such meeting was given by a precept made out at a petty session held twenty-one days before the General Sessions, and directed to the High Constable. No justice was allowed to act at these special sessions who was in any manner engaged or interested in the sale or manufacture of malt, ale or excisable liquors, nor in the licensing of property for the manufacture or sale of such liquors in which he was in any way interested. For violating this statute he was liable to a penalty of

1000^l.¹ These justices had power by a majority vote to grant or refuse licenses to any person. Every person applying for a license for a house not previously kept as an inn was required to affix on the house door, and also on the door of the church or chapel in the parish in which the house was situated, a notice to the overseers of the poor and constables that he intended to apply for a license, and such notices were also required to be served on the one overseer and one peace-officer of the parish. The fee for a license, which was paid over to the justice's clerk, was 7s. 6d.

FIRST HOTEL IN NEW YORK CITY.

The earliest hotel erected on Manhattan Island of which any positive record is kept, was "Kriger's Tavern," built sometime between 1642 and 1645. It stood on the same ground now occupied by number 9 Broadway, New York City, opposite Bowling Green. Later, in 1703, the "King's Arms" took the place of this tavern, being erected on the same spot, and was for many years the leading hostlery of the city. It maintained its supremacy till the year 1780, and was the favorite messing place of the British officers.

COLONIAL STATUTE.

In closing this introductory chapter we submit the law regarding inns and innkeepers, enacted by the Duke of York, about 1665, when New York was an English Province, having been just surrendered by the Dutch :

"Innkeepers and Ordinaryes.—No licensed person shall unreasonably exact upon his guests for any

1. 9 Geo. IV, ch. 61.

sort of entertainment ; and no man shall be compelled to pay above eight pence a meale (with small beere only) unless the guest shall make other agreement with the person so licensed. Every person licensed to keep an ordinary shall always be provided of strong and wholesome beere, of fower (4) bushels of malt at least to a hogshead, which hee shall not sell at above two pence the quart, under the penalty of twenty shillings for the first offence, forty shillings for the second and loss of license. It is permitted to any to sell beere out of doores, at a penny the ale-quart or under."

CHAPTER II.

INNS IN GENERAL.

We now come to speak of the subject of inns in a general manner, and to consider what is essential to constitute an inn from a legal standpoint.

INN DEFINED.

There have been numerous answers to the question "What is an inn?" The most erudite jurists have defined it in varying terms. The most concise definition is that of Petersdorf, who says it is "a house for the reception and entertainment of all comers for gain."¹ Bayley says it is "a house where the traveler is furnished with everything he has occasion for while on the way."² An inn is also said to be a public place of entertainment for all travelers who choose to visit it.³ A hotel is an inn or house for entertaining strangers or travelers. An inn is a house for the lodging and entertainment of travelers.⁴

An inn is "a house kept open publicly for the lodging and entertainment of travelers generally for a reasonable compensation."⁵ Anyone who makes it

1, Petersdorf's Abridg., Vol. 5, p. 159;

2, Thompson vs. Lacy, 3 B. & Ald., 203; see also, Dickerson vs. Rodgers, 4 Humph., 179;

3, Pinkerton vs. Woodman, 33 Cal., 557;

4, People vs. Jones, 54 Barb., 311;

5, Ingalsbee vs. Wood, 36 Barber 462;

his business to entertain travelers and passengers, and provide lodgings and necessities for them, their horses and attendants, is a common innkeeper.¹ An innkeeper is defined as "one who keeps an inn or house for the accommodation of travelers."² The learned Best J., has given an excellent definition of an inn, in an opinion in which he says that an inn is a house, the owner of which holds out that he will receive all travelers and sojourners who are willing to pay a price adequate to the sort of accommodation provided, and who come in a state in which they are fit to be received.³ An inn was said by Kelly, Ch. B., to be "a place instituted for passengers and way-faring men."⁴

A public house of entertainment for all who choose to visit it is the true definition of an inn.⁵ The able Chief Justice Daly, in the course of an exhaustive opinion on the subject of inns, says: "An inn is a house where all who conduct themselves properly, and who are able and ready to pay for their entertainment, are received, if there is accommodation for them, and who, without any stipulated engagement as to the duration of their stay, or as to the rate of compensation, are, while there, supplied, at a reasonable charge, with their meals, lodging, refreshments and such services and attention as are necessarily incident to the use of the house as a temporary home."⁶

1, Edwards on Bailments, section 450;

2, Burrill's Law Dictionary;

3, Thompson vs. Lacy, *supra*;

4, Queen vs. Rhvmer, L. R. 2, Q. B. Div., 136. p. 140;

5, Wintermute vs. Clark, 5 Sandf., 242, 247; Walling vs. Potter, 35 Conn., 183; Wait's Act. & Def., 343; Bouvier's Institutes, § 1015; Redf. C. & Bal., § 584; Edw. on Bailm., § 455; Schouler on Bailm., 256;

6, Cromwell vs. Stevens, 2 Daly, 151;

WHAT CONSTITUTES AN INN.

The Courts have frequently been called upon to decide whether or not an establishment kept for the entertainment of the public, was legally an inn. It has been held that a hotel kept in a city for the entertainment of transient guests is an inn.¹ A proprietor of a house or hotel, on what is called the European plan, where rooms are rented, and meals supplied at a restaurant in the hotel, is an innkeeper within the meaning of Chapter 421 of the laws of 1855.² A person who makes it his business to entertain travelers and passengers, and furnish lodgings and necessities for them, and their horses and attendants, is a common innkeeper.³ It should be done for a reasonable compensation.⁴

A house for the reception and entertainment of people, principally emigrants, who arrived at a port and stayed but a short time, is an inn.⁵ In order to legally constitute an inn it is not necessary that meals should be served at *table d' hôte*.⁶ Generally speaking, stables are not necessary for an inn. The New York statutes require stables for all inns, except in cities. A man may be an innkeeper though he keeps the inn imperfectly or combines that employment with others. If he is prepared and holds himself out to the public as ready to entertain travelers, strangers and transient guests, with their teams, although he may sometimes make special bargains, may not keep

1, Taylor vs. Mennott, 1 Abb., 325;

2, Bernstein vs. Sweeney, 1 J. & S., 271;

3, Parker vs. Flint, 12 Mod., 255; Parkhurst vs. Foster, Salk., 287;

4, Overseers vs. Warner, 3 Hill, 157;

5, Willard vs. Reinhardt, 2 E. D. Smith, 148;

6, Krohn vs. Sweeney, 2 Daly, 200;

his house open in the night, and may not keep the stable at which he puts up horses at his house.¹

WHAT IS NOT AN INN.

The keeper of a restaurant who has no beds for the accommodation of travelers is not an innkeeper. A mere lodging-house, in which no provision is made for supplying the lodgers with their meals, wants one of the essential requirements of an inn. A house which does not contain the means of preparing food for the table in the ordinary way has not the necessary accommodations to entertain travelers. A free lunch at the bar, or the occasional bringing of victuals from a neighboring restaurant, will not transform a drinking saloon into a hotel.² A mere restaurant or eating-house is not an inn, nor a mere lodging-house, in which no provision is made for supplying the lodgers with their meals; and in respect to houses for the entertainment of travelers, of which there are many, where the guest or traveler pays so much a day for his room, and takes his meals or not, as he thinks proper, in the restaurant, paying separately for each meal, as he takes it, they are to be considered inns, if the restaurant forms part of the establishment, and the whole house is kept under one general management for the reception of all guests or travelers that may come there.³ At common law it was held that a house in which lodgers are received and provided with meat and drink under an agreement, at a stipulated rate, is not

1, Carr vs. Weatherbee, 101 Mass., 214;

2, Matter of Kelley vs. Excise Commissioners, 54 How. 332;

3, Cromwell vs. Stevens, 2 Daly, 15;

an inn, although the master of the house provides stables for their horses.' One who lets out rooms in the upper part of a building to lodgers but does not supply them with meals, but leases the basement of the building to another person who keeps a restaurant or an independent establishment, from which access may be had to the lodging rooms, is not an inn-keeper.²

It has been held that a restaurant is not an inn, so as to charge the proprietor with the liabilities of an inn-keeper toward transient persons who take their meals there, and that the same rule applies even though he does in fact keep in the same building a hotel to which the restaurant is attached.³ It is also held that a refreshment bar is not an inn, although it is connected with a hotel, and kept under the same license, but entered by a separate door from the street.* A person who does not hold himself out as an inn-keeper but entertains travelers occasionally for pay is not an inn-keeper and not liable as such.⁵ A person keeping a lodging-house for strangers at a watering place during the Summer, but not open to all, is not an inn-keeper.⁶ It has been held that a sleeping car is not an inn,⁷ and it is also held that a steamship was not an inn, so that a pas-

1, *Parkhurst vs. Foster*, Salk., 387; 12 Mod., 254; 1 Ld. Ray, 479, Cath., 417;

2, *Cochrayne vs. Schryver*, 12 Daly, 174;

3, *Carpenter vs. Taylor*, 1 Hilton, 193;

4, *Regina vs. Rymer*, L. R., 2 Q. B. D., 136;

5, *Lyon vs. Smith*, 1 Morris (Iowa), 184;

6, *Southard vs. Myers*, 6 Bush., 681;

7, *Pullman Co. vs. Smith*, 73 Ill., 360; and see *ante*, Chapter XI;

senger occupying a state room is not entitled to the same rights as a guest at a hotel.¹

SIGN OF AN INN.

Although the fact that a sign is put up, announcing that a house for accommodation of travelers is an inn, is evidence of the character of the establishment, it by no means follows that a sign is one of the essentials of an inn. "Everyone who makes it his business to entertain travelers, and provide lodgings and necessities for them, their attendants and horses, is a common inn-keeper, whether a sign swings before the door or no."²

By Section 9 of Chapter 628 of the laws of 1857 of this State, it is provided:

"Every inn, tavern or hotel keeper licensed under the provisions of this Act, shall, within thirty days after obtaining his license, put up a proper sign on or adjacent to the front of his house, with his name thereon, indicating that he keeps an inn, tavern or hotel; and he shall keep up such sign during the time that he keeps an inn, tavern or hotel. For every month's neglect to keep up such sign he shall forfeit ten dollars."

By opening a common inn the hosteller undertakes to receive and entertain all travelers until his house is filled; and that although he has removed the sign which he had before exhibited, if he continue to conduct his house as formerly, and hold himself forth as keeping an inn; for a sign is only evidence of and not essential to an inn.³

1, Clark vs. Burns, 118 Mass., 275;

2, Bacon's Abridg. Innk., Tit. B.; see Dickerson vs. Rodgers, 4 Humph., 179;

3, Collins ca., Palm., 373-4; 2 Ro., 345; 1 Bro. Abr., Act. sur ca., 76; Bennett vs. Mellor, 5 T. R., 273; York vs. Grindstone, Salk. 388; Newton vs. Trigg, 1 Show., 270;

RIGHT OF ESTABLISHING INNS.

Under the common law any person could erect and maintain an inn. The right to keep an inn in the common law sense of the term is not a franchise; and hence, notwithstanding the excise statutes, any person may keep such house without a license, as it is a lawful trade open to any citizen.¹ The right to keep a hotel was not understood at common law to include the right of selling intoxicating liquors, unless such right was secured by the proper license.

There were no restrictions at common law upon the establishment of inns and hotels. Whatever restrictions are imposed on the establishment of inns, hotels, etc., originated in the enactment of the legislature.²

All common law restrictions were confined to the manner of keeping them; that is so as not to cause a nuisance, either to the public, or to any particular individual. The restrictions imposed by the legislature were imposed with a two-fold intention: to protect the revenue arising from the excise duty, and to prevent houses in which such liquors are sold from being under the management of improper persons.³

In New York State, the common law rule, as laid down in the case of *Overseers vs. Warner*, just cited, has probably been abrogated by statute. The legislature have given power to the commissioners of excise to grant licenses to keep hotels without granting the applicant a license to sell intoxicating liquors.

1, *Overseers vs. Warner*, 3 Hill, 150 ; but see *ante*.

2, *Parker vs. Flint*, Holt, 366; *Stevens vs. Watson*, Salk., 45; *Rex vs. Iyves*, 2 Show., 468; *Anon.*, Palm., 367, 374;

3, *Wilcock on Inns*, p 2;

This statute (Chapter 419 of the laws of 1877,) reads as follows :

Licenses to keep tavern pursuant to the laws of this State, may be granted by the commissioners of excise, in the several cities and towns of this State, or by any board or officers exercising the power of such commissioners, without including a license to sell strong or spirituous liquors, ale, wines, beer or alcoholic drink. And in all such cases the license shall express such restrictions on its face, and a fee of five dollars may be charged for granting such license, and no more; but no such license shall be given until the bond required to be given by tavern keepers is executed and delivered to said commissioners.

It *seems* that any citizen desiring to keep an inn, and avail himself of the immunities afforded by the law to inn-keepers, must comply with the provisions of this Act. Such seems to be a reasonable construction. But there are no direct authorities on the subject. The only light we are able to get is from the case of *Trimmer vs. Hiscock*, (27 Hun., 364,) where the matter came up in an incidental manner before the judge presiding at the trial. This action was brought to recover damages for slanderous words spoken regarding a hotel-keeper, and the court held that defendant was precluded from admissions in his answer, from claiming that plaintiff was not a hotel-keeper under the Act of 1877, and it may be inferred that but for this unfortunate admission the plaintiff would have been nonsuited upon the trial.

LICENSE NOT ESSENTIAL TO CHARGE INN-KEEPER.

It was held in the State of Maine that a license was not essential at common law for the maintenance

of an inn so as to hold the inn-keeper liable in his capacity of public entertainer.¹ Dickerson, J., said: "That the defendant was not licensed as an inn-keeper is no objection to the maintainance of this action. A license does not change the character of the business of those who entertain travelers. The possession of it does not make, nor the want of it prevent a person from being an inn-holder at common law; it is his business that fixes the *status* of a party in this respect. A license saves an inn-holder from the penalty of being an inn-holder without license, but the want of it does not save him from his liability to his guest; it would be a perversion of justice, and a fraud upon the law, if he could avail himself of his own criminality to defraud their lawful claims against him. Besides, it is not their duty to inquire whether one who entertains travelers is duly licensed, if, indeed, they could ascertain this upon inquiry."

MANNER OF ESTABLISHING INNS.

The statutes of the several States have various provisions relating to the manner of establishing inns. We have already seen that all restrictions are created by statute law. The New York statute is alone referred to in these pages.

PETITION FOR LICENSE.

In order to establish an inn, a license should be procured. To obtain this the applicant must sign a petition and present it to the board of excise. This petition must be in writing, setting forth the kind of license desired, the place where, the name of applicant

1. Norcross vs. Norcross, 53 Me., 164;

or applicants, and every person interested or to be interested in the business; it must be presented at the annual meeting of the excise board upon the first Monday in May, or if desired at some later period, when the board may be called together for that purpose. The commissioners must be satisfied that the applicant is of good moral character, has sufficient ability to keep an inn, tavern or hotel, and the necessary accommodations to entertain travelers, and that an inn, tavern or hotel is required for the actual accommodation of travelers, at the place where such applicant resides or proposes to keep the same, all of which shall be expressly stated in the license granted by the board. No license shall be granted except on the petition of no less than twenty freeholders of this State, residing in the election district where such inn, tavern or hotel is proposed to be kept, by them duly signed and verified by the oath of a subscribing witness, and not then unless, in the opinion of the commissioners, such inn, tavern or hotel is necessary or proper; and not more than one license shall be granted on the memorial of the same petitioners or any of them. The commissioners guilty of granting licenses contrary to the provisions of the statute are to be deemed guilty of a misdemeanor. (Laws 1857, Chapter 628, Section 6.)

INN-KEEPERS' BONDS.

No license to keep an inn, tavern or hotel shall be granted until the applicant shall have executed and delivered to the board of commissioners of excise, a bond to the people of the State, in the penal sum of \$250, with sufficient sureties, who shall duly justify in the sum of \$500, to be approved by the board of

commissioners, with a condition that such applicant, during the time that he shall keep any inn, tavern or hotel, will not suffer it to be disorderly, or suffer any gambling, or keep a gambling table of any description, within the inn, tavern or hotel, so kept by him, or in any outhouse, yard or garden belonging thereto. (Laws 1857, Chapter 628, Section 7.)

GAMBLING IN THE INN.

The keeping of any gaming table forfeits the inn-keeper's bond under this section. A billiard table has been held to be a gaming table. It has been held that the games played upon back-gammon boards were lawful, and all games of skill, including billiards, were lawful, unless played for money.¹ A learned judge once observed that if he could have his way he would hold that a billiard room, kept for filthy lucre's sake, was a common law nuisance, and that a bowling alley was a nuisance.² Throwing dice for drinks is held unlawful in Kentucky.³ In Virginia, betting on a game of bagatelle is held to be contrary to law.⁴ Tennessee courts hold that it is gaming to sell prize packages, and to be an indictable offense.⁵

GAMING IN TAVERNS PROHIBITED.

There shall not be allowed or suffered any cock-fighting, playing with cards or dice, or any kind of gaming by lot or chance, within any house kept as a

- 1, Wharton on Innk., 65; See 8 Cowen, 39;
- 2, (See Tanner vs. Albion, 5 Hill, 128; *contra*, People vs. Sargeant, 8 Cow., 139;
- 3, McDaniels vs. Connors, 6 Bush., 326;
- 4, Neal's case, 22 Gratt., 917;
- 5, Eubanks vs. State, 6 Hersk., 488;

public inn or tavern, or in any grocery, or other place where spirituous liquors shall be licensed to be sold, nor shall there be any playing with cards or dice for gain or money, or any kind of gaming by lot or chance on board any vessel used for the transportation of passengers, or on board any packet or other boat employed in the conveyance of passengers on any canal; nor shall any billiard table or other gaming table be kept on board such vessel or boat, or within such house or place, or in any outhouse, yard or garden belonging to such house or place.

The master of any vessel or boat, and the keeper of any inn, tavern or grocery or other place where spirituous liquors are licensed to be sold, who shall offend against either of the provisions of the last section, shall forfeit ten dollars for each offense, to be received by and in the name of the overseers of the poor of the town where any such offense shall be committed by the keeper of an inn, tavern, grocery or other place before mentioned, and by and in the name of the overseers of the poor of any town where the offense shall be committed by any master of a vessel or boat.¹

INN TO BE KEPT ORDERLY.

It was the common law doctrine that the inn-keeper must keep his house orderly and must not permit it to become a meeting place for thieves, or even reported thieves.² The inn-keeper should not allow a policeman, while on duty, to remain on his premises, except in the proper execution of his lawful duties.³

1, New York Revised Statutes, 7th Ed., 1961-2;

2, *Marshall vs. Fox*, L. R., 6 Q. B., 370; *Markham vs. Brown*, 8 N. H., 523;

3, *Mullins vs. Colins*, 43 L. R., Mic., 67;

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SPARE BEDS AND STABLING.

Every keeper of an inn, tavern or hotel, in any of the towns or villages of this State, shall keep in his house at least three spare beds for his guests, with good and sufficient bedding, and shall provide and keep good and sufficient stabling, and provender of hay in the winter, and hay or pasturage in the summer, and grain for four horses or other cattle, more than his own stock, for the accommodation of travelers; and every keeper of an inn, tavern or hotel in the cities of this State shall keep at least three spare beds, and the necessary bedding, for the accommodation of travelers. For every neglect or default in having either of the articles herein required, such keeper shall forfeit ten dollars, to be recovered by the overseers of the poor for the use of the poor.

(Laws 1857, Chapter 628, Section 8.)

The above section does not apply to New York or Brooklyn.

INN-KEEPER CANNOT ACT AS JUSTICE.

According to section 2866 of the Code of Civil Procedure of the State of New York, a justice of the peace who is an inn-holder or tavern keeper has no jurisdiction under any provision of Chapter 19 of said Code. If a judgment has been actually rendered before him previous to the time of his becoming so disqualified, he may give a transcript thereof, or issue execution thereupon, or satisfy the judgment on payment thereof. If a justice should keep a tavern in fact, by keeping up a sign, receiving travelers and selling liquor, it was held to be keeping a tavern within

in the statute, although he had no license.¹ The disqualification of a justice by keeping hotel is not waived by voluntarily going to trial.² The old Act of 1846 was held not to apply to special proceedings,³ but this section of the Code is much broader in its scope.

UNLICENSED INNS CANNOT BE VISITED BY MESSENGER BOYS.

The following provisions of Chapter 532 of the laws of 1887, regulate the employment of messenger boys at unlicensed inns and taverns in this State:

SECTION 1. It shall be unlawful for any corporation or person employing messenger boys knowingly to place or permit to remain in any disorderly house, or in any unlicensed saloon, inn, tavern or other unlicensed place, where malt or spirituous liquors or wines are sold, any instrument or device by which communication may be had between said disorderly house, saloon, inn, tavern or other unlicensed place and any office or place of business of such corporation or person employing messenger boys.

§ 2. It shall be unlawful for any corporation or person employing messenger boys, to knowingly send or permit any person to send any messenger boy to any disorderly house, unlicensed saloon, inn, tavern or other unlicensed place, where malt or spirituous liquors or wine are sold, on any errand or business whatever. This shall not apply to telegrams delivered at the door of any house.

1. Clayton vs. PerDunn, 13 Johns., 218; Schemmerhorn vs. Tripp, 2 Caines, 108;
2. Clayton vs. PerDunn, *supra*;
3. Rice vs. Nulks, 7 Barber, 337;

§ 3. Any person who violates the provisions of this act shall be deemed guilty of a misdemeanor.

§ 4. Any person or corporation violating the provisions of this act shall incur a penalty of fifty dollars, which may be recovered in an action to be brought in the name of the people by the district attorney of the county in which such violation occurs.

§ 5. This act shall take effect immediately.

CORPORATIONS FOR HOTEL PURPOSES.

Chapter 143 of the laws of 1874, provides as follows :

SECTION 1. At any time hereafter any five or more persons who may desire to form a company for the purpose of erecting buildings for hotel purposes or keeping hotels, or for either or both of such purposes, may make, sign and acknowledge, before some officer competent to take the acknowledgment of deeds, and file in the office of the clerk of the county in which the business of the company shall be carried on, and a duplicate thereof in the office of the Secretary of State, a certificate in writing, in which shall be stated the corporate name of the said company and the object for which the company shall be formed; the amount of the capital stock of the said company, which shall not be less than ten thousand dollars nor exceeding one million dollars; the term of its existence not to exceed fifty years; the number of shares of which the stock shall consist; the number of trustees and their names who shall manage the concerns of the said company for the first year, and the name of the place in which the operations of the said company are to be carried on.

§ 2. When the certificate shall have been filed, as aforesaid, the persons who shall have signed and acknowledged the same, and their successors, shall be a body politic and corporate, in fact and in name, by the name stated in such certificate, and by that name have succession, and shall be capable of suing and being sued in any of the courts of this State; and they and their successors may have a common seal, and may make and alter the same at pleasure; and they shall, by their corporate name, be capable in law of purchasing, holding, leasing and conveying any real and personal estate whatever, which may be necessary to enable the said company to carry on its operations named in such certificate.

§ 3. The stock, property and concerns of such company shall be managed by not less than three nor more than nine trustees, who shall respectively be stockholders in such company and citizens of the United States, and a majority of whom shall be citizens of this State, who shall, except the first year, be annually elected by the stockholders, at such time and place as shall be directed by the by-laws of the company; and public notice of the time and place of holding such election shall be published, not less than ten days previous thereto, in a newspaper printed in the town or city in which or nearest to the place where the operations of the said company shall be carried on, and the election shall be made by such of the stockholders as shall attend for that purpose, either in person or by proxy. All elections shall be by ballot, and each stockholder shall be entitled to as many votes as he owns shares of stock in the said company, and the persons receiving the greatest

number of votes shall be trustees; and when any vacancy shall happen among the trustees, by death, resignation, or otherwise, it shall be filled for the remainder of the year in such manner as may be provided for by the by-laws of the said company.

§ 4. In case it shall happen at any time that an election of trustees shall not be made on the day designated by the by-laws of said company, when it ought to have been made, the company for that reason shall not be dissolved, but it shall be lawful on any other day to hold an election for trustees in such manner as shall be provided for by the said by-laws; and all acts of trustees shall be valid and binding as against such company, until their successors shall be elected.

§ 5. There shall be a president of the company, who shall be designated from the number of the trustees, and also such subordinate officers as the company by its by-laws may designate, who may be elected or appointed, and required to give such security for the faithful performance of the duties of their office as the company by its by-laws may require.

§ 6. It shall be lawful for the trustees to call in and demand from the stockholders respectively, all such sums of money by them subscribed, at such times and in such payments or installments as the trustees shall deem proper, under the penalty of forfeiting the shares of stock subscribed for and all previous payments made thereon, if payment shall not be made by the stockholders within sixty days after a personal demand of the same or notice requiring such payment shall have been published for six successive weeks, in

a newspaper printed in the city or town in which or nearest to the place where the business of the company shall be carried on as aforesaid.

§ 7. The trustees of such company shall have power to make such prudential by-laws as they shall deem proper, for the management and disposition of the stock and business affairs of such company, not inconsistent with the laws of this State, and prescribing the duties of officers, artificers and servants that may be employed, for the appointment of all officers, and for carrying on all kinds of business within the objects and purposes of said company.

§ 8. The stock of such company shall be deemed personal estate, and shall be transferable in such manner as shall be prescribed by the by-laws of the company; but no shares shall be transferable until all previous calls thereon shall have been fully paid in, or shall have been declared forfeited for the non-payment of calls thereon. And it shall not be lawful for such company to use any of its funds in the purchase of any stock in any other corporation, or to hold the same, except as collateral security to a prior indebtedness.

§ 9. The copy of any certificate of incorporation filed in pursuance of this act, certified by the county clerk under his official seal to be a true copy, and of the whole of such certificate, shall be received in all courts and places as presumptive legal evidence of the facts therein stated,

§ 10. No person holding stock in any such company, as executor, administrator, guardian or trustee, and no person holding such stock as collateral security, shall be personally subject to any liability as stock-

holders of such company; but the person pledging such stock shall be considered as holding the same, and shall be liable as a stockholder accordingly; and the estate and funds in the hands of such executor, administrator, guardian or trustee, shall be liable in like manner and to the same extent as the testator or intestate, or the ward or person interested in such trust fund, would have been if he had been living and competent to act and hold the same stock in his own name.

§ 11. Every such executor, administrator, guardian or trustee shall represent the share of stock in his hands at all meetings of the company, and may vote accordingly as a stockholder; and every person who shall pledge his stock as aforesaid may, nevertheless, represent the same at all such meetings, and may vote accordingly as a stockholder.

§ 12. The said company shall be subject to the same liabilities as natural persons for all the purposes of this act; and shall be liable in the same manner and to the same extent as the proprietors of other hotels are liable, for loss, injury, or destruction of the property of guests, except as may be otherwise provided by special written contract; but this section shall not be construed so as to make said company liable as hotel-keepers in case said company shall have leased said hotel.

§ 13. Each stockholder of said company shall be jointly, severally and individually liable to the creditors of, or those holding claims against, said company, to an amount equal to the amount of stock held by him or her in said company, for all the debts and liabilities of the company, but shall not be liable

to an action therefor before an execution shall be returned unsatisfied, in whole or in part, against the company, and then the amount due on such execution shall be the amount recoverable, with costs, against such stockholders.

§ 14. It shall be the duty of the trustees of every such corporation or company to cause a book to be kept by the treasurer or clerk thereof, containing the names of all persons, alphabetically arranged, who are, or shall within six years have been, stockholders of such company, and showing their places of residence, the number of shares of stock held by them respectively, and the time when they respectively became the owners of such shares, and the amount of stock actually paid in; which book shall, during the usual business hours of the day, on every day except Sunday, and the thirtieth day of May, the fourth day of July, the twenty-fifth day of December and the first day of January, be open for the inspection of stockholders and creditors of the company, who have obtained judgment upon their claims, upon which execution has been returned unsatisfied in whole or in part, and their personal representatives, at the office or principal place of business of such company, in the county where its business operations shall be located; and any and every such stockholder, creditor or representative shall have a right to make extracts from such book; and no transfer of such stock shall be valid for any purpose whatever, except to render the person to whom it shall be transferred liable for the debts of the company according to the provisions of this act, until it shall have been entered therein, as required by this section, by an entry showing to and

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from where transferred. Such book shall be presumptive evidence of the facts therein stated, in favor of the plaintiff in any suit or proceeding against such company or against any one or more stockholders. Every officer or agent of any such company who shall neglect to make any proper entry in such book, or shall refuse or neglect to exhibit the same or allow the same to be inspected and extracts to be taken therefrom, as provided by this section, shall be deemed guilty of a misdemeanor, and the company shall forfeit and pay to the party injured a penalty of fifty dollars for every such neglect or refusal, and all the damages resulting therefrom; and every company that shall neglect to keep such book open for inspection as aforesaid shall forfeit to the people the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the name of the people by the district attorney of the county in which the business of such corporation shall be located; and when so recovered, the amount shall be paid into the treasury of such county for the use thereof.

§ 15. Every corporation created under this act shall possess the general powers and privileges, and be subject to the liabilities and restrictions contained in title third of chapter eighteen of the first part of the Revised Statutes.

§ 16. After the passage of this act it shall not be lawful to organize any corporation under chapter three hundred and seventy-one of the laws of eighteen hundred and sixty-six, or the acts passed supplementary thereto or amendatory thereof.

§ 17. The trustees of any company organized or hereafter to be organized under this act may purchase

lands and other property necessary for their business and issue shares of the capital stock of such company in payment therefor to the amounts of the value of such property, and the stock so issued shall be declared and taken to be full-paid stock and not liable to any further calls, and the holders thereof shall only be subject to the same liabilities and have the same rights as other holders of full-paid stock in said company, but in all statements and reports of the company to be published their stock shall not be stated or reported as being issued for cash paid into the company, but shall be reported in this respect according to the facts. But nothing in this act contained shall be construed to authorize the trustees of any such company to issue stock in excess of the amount limited by its certificate of incorporation.

[Added by Chapter 127, Laws of 1886.]

SLANDERING THE INN.

In Bacon's abridgement it is laid down that mis-statements, made to the disparagement of a hotel with the design of inducing people not to become guests, are actionable at law, and this seems to be the rule on the subject.¹

1. See *Trimmer vs. Hiscock*, 27 Hun., 364.

CHAPTER III.

INN-KEEPERS AND GUESTS.

We shall next consider the duties of the inn-keeper toward the public, and his rights in connection with such responsibility.

DUTY TO RECEIVE GUESTS.

By the common law every person who opened a public house of entertainment known as an inn by the wayside, and proposed to exercise the business and employment of a common inn-keeper, was bound to receive into his inn, and furnish such accommodations as he possessed to all travelers who applied for the same, in a fit and proper condition to be received, and who were able and willing to pay his customary charges for entertainment, and conduct themselves in an orderly manner.¹ By opening a common inn, the hosteller undertakes to receive and entertain all travelers until his house is filled; and that although he has removed the sign which he had before exhibited, if he continue to conduct his house as formerly, and hold himself forth as keeping an inn.² It was held that he was under the same obligation to receive the horses

- 1, Taylor vs. Humphreys, 30 Law J., 262; Watson vs. Cross, 2 Duval, 147; Newton vs. Tigg, 1 Show, 276; Pinkerton vs. Woodward, 33 Cal., 557; Grinnell vs. Cook, 3 Hill, 485; 1 Bell's Comm., 472, 5th Ed.;
- 2, Willcock on Inns, 47;

of his guests, and keep them, and also whatever goods they might bring to the inn.¹ The inn-keeper is not at liberty to refuse to receive any guest, for whom he has room at the inn, either in the day or night, nor can he discharge himself from his liability by a refusal to take charge of his guest's goods on the ground that there are suspected persons in the house for whose conduct he does not care to become responsible.² The inn-keeper does not absolutely undertake to receive all persons who come to the inn, but only those who are capable of paying a compensation suitable to the accommodations which he provides for his guests.³

If he refused to receive and entertain a guest for whom he had room, without some reasonable ground for such refusal, or if he falsely stated his house was full when he had room for the traveler, he was liable to an action in both the civil and the criminal courts.⁴ And it was also held that in such case it was not necessary for the traveler to tender the price of his entertainment to the hosteller, if his rejection was not placed on that ground, nor was it material that the guest was traveling on Sunday, or came to the inn at night, after the inn-keeper had gone to bed. In Bacon's Abridgement it is said: "Neither illness, nor insanity, nor lunacy, nor idiocy, nor hypochondriaism, nor vapors, nor absence, nor intended absence, can avail the landlord as an excuse for refusing admission."⁵ The illness or desertion of his servants might be an excuse if he had been unable to replace them,

1, *Idem, supra*;

2, Jones on Bailments, 94; Edwards on Bailments, 408;

3, Thompson vs. Lacy, 3 Barn. & Ald., 285;

4, Dyer, 158, b 1; Rex vs. Ivens, 7 Carr. & Payne, 213;

5, Bacon's Abridgement, Inns, chap. 4;

48 MISDEMEANOR TO REFUSE ADMISSION.

and perchance his own infancy and perhaps not.¹ Any one may claim the right of a guest who is of good character and demeanor and ready to pay for what he may call.² One living in the same town cannot compel the inn-keeper to receive him.³

This duty of the inn-keeper to receive guests seems to have been well understood and maintained in the earlier history of jurisprudence. Lord Kenyon said: "Inn-keepers are bound by law to receive guests who come to their inns; and are also bound to protect the property of their guests. They have no option, either to receive or reject guests, and as they cannot refuse to receive guests, so neither can they impose unreasonable terms upon them."⁴ Judge Coleridge says: "The inn-keeper is not to select his guests. He has no right to say to one, you shall come into my inn, and to another, you shall not, as every one coming and conducting himself in a proper⁵ manner has a right to be received." If the host refuse to receive either man or horse, unless he have no room, he is liable to an action.⁶ It was said he might be compelled by the constable to receive guests.⁷

A MISDEMEANOR TO REFUSE ADMISSION.

The New York Penal Code, in section 381, declares that "a person who, either on his own account

1, Addison on Torts, 938, but see Com. Dig., Vol. I, p. 413;

2, Redfield on Carriers and Bailees, § 594;

3, Note to Walling vs. Potter, 9 Am. Law Reg., N. S. 618, 620;

4, Kirkman vs. Shawcross, 6 T. R., 17;

5, Rex vs. Ivens, 7 Carr. & Payne, 213;

6, Keiler 50; Dy., 158, pl., 33;

7, Dalt., c. 7;

or as agent or officer of a corporation, carries on business as inn-keeper, or as common carrier of passengers, and refuses, without just cause or excuse to receive and entertain any guest, or to receive and carry any passenger, is guilty of a misdemeanor."

WHEN INN-KEEPERS MAY REFUSE TO RECEIVE.

The inn-keeper will be justified in refusing to receive a guest who conducts himself in a disorderly or noisy manner, and he may, in such case, compel him to leave the inn, after he has become a guest.¹ It has been held that an inn-keeper is not bound to receive one whose notorious character as a thief furnishes good reason to suppose that he will purloin the goods of his guests or his own; so he may prohibit the entry of one whose misconduct in other particulars, or whose filthy condition would subject his guests to annoyance.²

In the case of *Markham vs. Brown* just cited, the court held that an inn-keeper is bound, under proper limitations, to admit travelers and those also having business with them as such, and that if he gives a general license to enter his inn to some persons whose business is connected with his guests, in their character as travelers, he cannot lawfully exclude others, pursuing the same business who enter for a similar purpose. It was held in the case of *Rex vs. Ivens*, (*supra*,) that if a guest come to an inn drunk, or behave in an improper or indecent manner, the inn-keeper is not bound to receive him.

It was recently held in Maine that an inn-keeper

- 1, *Howell vs. Jackson*, 6 Carr. & Payne, 742; *Moriarty vs. Brooks*, 6 Carr. & Payne, 634;
- 2, *Markham vs. Brown*, 8 N. H., 523;

is not justified in refusing to receive a member of a militia company as a guest, merely because other militiamen, received as guests on the same occasion, had misconducted themselves at the inn. The court, however, laid down the doctrine that the inn-keeper was not required by law to furnish entertainment for intoxicated or disorderly persons, and if he had reason to suspect that plaintiffs belonged to the same band of disorderly soldiers who had threatened to despoil his house, and that they were evil disposed towards him, or had conspired with the disorderly soldiers to harm his house, or guests, or if they were intoxicated or disorderly persons, then he would have been justified in refusing them entertainment.¹

In a recent action against a common carrier for refusal to take plaintiff on defendant's steamboat, the judge charged that defendant had a right to refuse to admit persons who refuse to obey the reasonable regulations of the boat, or who are guilty of gross and vulgar habits of conduct, or who make disturbances on board, or whose characters are doubtful or dissolute, or suspicious, and *a fortiori* whose characters are equivocally bad.² In commenting upon that case, the editor of the Albany Law Journal says: "The analogy between the rights and duties of inn-keepers and common carriers is very close, so that this decision has a strong bearing on the rights of inn-keepers to refuse guests. We have little doubt that the courts would sustain an exception to the general rule, sufficiently broad to permit hotel-keep-

1, Atwater vs. Sanger, 76 Me., 538;

2, Jencks vs. Coleman, 2 Sumn., 221;

ers to exclude persons of undoubtedly disreputable characters."¹

NECESSITY OF TENDERING PRICE OF ACCOMMODATIONS.

As to the necessity of a traveler making a tender to the inn-keeper in order to place the latter under obligations to receive him, it was held in England that a guest was not obliged to tender the price of entertainment.² In a later case the court disagreed with the doctrine of the case just cited, but the judges were not called upon to give a judicial opinion on the point,³ and "a decision is only binding for such law as is necessarily decided therein."⁴ It has been stated on good authority that an offer to pay was unnecessary on the part of the guest.⁵ In a case arising in Canada it was held necessary.⁶ If the inn-keeper refuse admission, as by slamming a door in the traveler's face, and if he could not see an open window, it was thought a tender would be unnecessary.⁷ Again it is said that a guest is not entitled to be entertained unless he tender a fair remuneration for accommodations desired, as the inn-keeper is not obliged to give credit.⁸ However, when a guest is rejected, the fact that he has not made a tender is no defense, unless the rejection be placed on that ground.⁹

1, Albany Law Journal, Vol. 6, p. 69, Aug. 3, 1872;

2, Rex vs. Ivens, 7 Carr. & Payne, 213;

3, Fell vs. Knight, 8 Mees. & W., 276;

4, Sharp vs. Fancher, 29 Hun, 194;

5, Wharton on Inns, page 78;

6, Doyle vs. Walker, 2 Q. B., 502;

7, Fell vs. Knight, *supra*;

8, Bro. Action Sur. Case., 76; Bro. Contracts, 43; 9 Co., 87 b;

9, Rex vs. Ivens, *supra*;

PUBLIC AND CIVIL RIGHTS.

The Legislature of this State, in 1873, passed an act "To provide for the protection of citizens in their civil and public rights," which provided as follows:

Section 1. No citizen of this State shall, by reason of race, color or previous condition of servitude, be excepted or excluded from the full and equal enjoyment of any accommodation, advantage, facility or privilege furnished by inn-keepers, by common carriers, whether on land or water, by licensed owners, managers or lessees of theaters, or other places of amusement, by trustees, commissioners, superintendents, teachers and other officers of common schools and public institutions of learning, and by cemetery associations.

§ 2. The violation of any part of the first section of this act shall be deemed a misdemeanor, and the party or parties violating the same shall, upon conviction thereof, be subject to a fine of not less than fifty dollars, or more than five hundred dollars.

§ 3. Discrimination against any citizen on account of color, by the use of the word "white," or any other term in any law, statute, ordinance or regulation now existing in this State, is hereby repealed and overruled.

The provisions of this statute were re-enacted in the New York Penal Code, (Section 38,) which reads:

No citizen of this State can by reason of race, color or previous condition of servitude, be excluded from the equal enjoyment of any accommodation, facility or privilege furnished by inn-keepers or common carriers, or by owners, managers or lessees of theaters or other places of amusement, by teachers and officers of common schools and public institutions of learning, or by cemetery associations. The violation of this section is a misdemeanor, punishable by a fine of not

less than fifty dollars, nor more than five hundred dollars.

UNITED STATES CIVIL RIGHTS ACT.

In 1875 the United States Congress passed an act, known as the Civil Rights Bill, the first and second sections of which were applicable to innkeepers. It provided that all persons within the jurisdiction of the United States should be entitled to the full and equal enjoyment of the accommodations, advantages, facilities and privileges of inns, public conveyances on land and water, theaters and other places of public amusement, subject only to the conditions and limitations established by law, and applicable alike to citizens of every race and color, regardless of any previous condition of servitude. Any violation of this act by denying such privileges to citizens, except for reasons by law applicable to citizens of every race and color, and regardless of previous condition of servitude, was punishable by forfeiture of \$500; every such offense was declared a misdemeanor punishable by fine not less than \$500, nor more than \$1,000, or by imprisonment not less than thirty days nor more than one year; but a conviction of the misdemeanor barred a penalty action, and a recovery of the penalty barred a criminal prosecution for the same offense.

UNCONSTITUTIONALITY OF U. S. ACT.

The first and second sections of the United States Civil Rights Bill, passed on March 1, 1875, are declared to be unconstitutional enactments as applied to the several States, not being authorized either by

the XIIIth or XIVth Amendments of the Constitution, and Congress has no power under those Amendments to guarantee to all persons within the jurisdiction of the United States, the full and equal enjoyment of inns, etc., and provide a penalty for its denial. The Amendment authorizes legislation only in case of a State invasion of the rights thereby conferred, while the act proceeds *ex directo*, and without regard to State action, to declare certain acts of individuals to be offenses.¹

DOGS ACCOMPANYING GUESTS.

Judge Manisty laid down the rule that a guest cannot, under any circumstances, bring a dog into a room where are other guests of the hotel, against the inn-keeper's wishes. In the same case Kelly, C. B., was of the opinion that this was stating the rule too strongly, as when a person came to an inn with a dog about which was nothing to cause annoyance or alarm, and the inn-keeper refused to put the animal in any stable or outbuilding, it might justify the owner in bringing it into the house. If the dogs were fierce or had fleas he thought the guest would not be warranted in bringing them into the house. In this case the prosecutor had been coming to the place kept by Rymer with several large dogs which had been found a source of annoyance to other guests. Defendant objected and prosecutor claimed a right to bring them, and defendant refused him refreshments because he brought the dogs with him. It was held that prosecutor's acts and conduct furnished a reasonable ground for defendant's refusal.²

1, Robinson vs. Memph. & Charl. R. R. Co., 109 U. S. Rep., 3; but see dissenting opinion of Harlan, J.

2, Regina vs. Rymer, L. R., 2 Q. B. D., 141;

WHO IS A GUEST?

It is no easy task to give an accurate definition of the term "guest" in its legal sense, so widely have the most learned jurists differed regarding what was necessary to constitute this relation so as to hold the inn-keeper to his common law liability as to those who are fed and lodged under his roof, and to invest such persons with the rights and privileges accorded to that position. The word itself is said to be derived from the Saxon *Gest*, which had the same signification as the French *Gist* or *Gite*, literally meaning "a stage of rest in a journey, a lodging."¹ Instead of endeavoring to frame a precise definition of the word, the object of this work will be more effectually accomplished by referring to the leading cases in which the relation has been involved, and endeavoring from them to formulate the prevailing doctrine.

GUEST MUST BE TRAVELER.

It seems to be the generally accepted rule that in order for one to receive that protection which the law gives to a guest at an inn, such person claiming protection must be a traveler. In a leading English case, an indictment for refusing to receive a person as a guest at an inn was quashed because it did not state that the person applying for accommodations was a traveler.²

It is not easy to lay down on the whole who should be deemed a guest in the common law sense. The facts in each case should guide the decision.³ A

1, Oliphant on Horses, 125;

2, Rex vs. Luelling, 12 Mod., 445; see also to same effect Regina vs. Rymer, L. R., Q. B. Div., 136;

3, Schouler on Bailments, 256;

traveler who comes to an inn and is accepted becomes instantly a guest.¹ A guest is a traveler or wayfarer who puts up at an inn.² It was said that it was not now deemed essential that a person should have come from a distance to constitute a guest.³ A leading case holds that distance is not material and that a townsman or neighbor may be a traveler and therefore a guest as well as he who comes from a distance or from a foreign country.⁴ In order to constitute a guest it is not essential that he should be a lodger or have refreshments at the inn, for if he leaves his horse there the host is chargeable on account of the benefit he receives for its keeping;⁵ but a New York case holds that this doctrine is but little ahead of downright nonsense and cannot be maintained.⁶ Bacon says that inns are for passengers and wayfaring men, so that a friend or a neighbor can have no action as a guest against the landlord.

Webster, in his dictionary, says that a guest is a stranger who comes from a distance and takes his lodgings at a place. Guests are also said to be those who are *bona fide* traveling, and make use of an inn, and not mere neighbors and friends who visit the house occasionally.⁷ One must be a traveler in order to obtain the rights and status of a guest. A mere friend or neighbor has no action as a guest.⁸ However, if the friend or neighbor be on his travels actu-

- 1, Story on Bailments, § 477;
- 2, Cayle's case, 8 Coke, 32;
- 3, Curtis vs. Murphy, 63 Wis., 4;
- 4, Walling vs. Potter, 35 Conn., 188;
- 5, Mason vs. Thompson, 9 Pick., (Conn.) 283;
- 6, Grinnell vs. Cook, 3 Hill, 485, 490;
- 7, Tidswell, the Inn-keeper's Legal Guide, 1;
- 8, Bacon's Abridg., Vol. 4, p. 448;

ally, he may claim such right. In short, anyone away from home, receiving accommodations at an inn as a traveler, is a guest and entitled to hold the inn-keeper as such.¹ It has been held that absence from home, whether on business or pleasure, constituted one a traveler.² In order to charge an inn-keeper on the custom or common law of the realm, for the loss of the goods of a traveler who was his guest, it is necessary: 1. That the inn be a common inn; 2. The party ought to be a traveler or passenger.³ Inns were instituted for the lodging and relief of travelers.⁴ Common inns are instituted for passengers and wayfaring men.⁵ "The cases show that to entitle one to the privileges and protection of a guest he must have the character of a traveler; one who is a mere temporary lodger in distinction from one who engages for a fixed period at a certain agreed rate. The main distinction is the fact that one is a wayfarer or *transiens*, and it matters not how long he remains, provided he assumes that character."⁶ It is held to be a well settled principle of law that if a person goes to an inn as a wayfarer or traveler, and is received into the house as such, he becomes a guest.⁷ Mr. Schouler seems to think that, notwithstanding the language of the old books, distance is not material in order to constitute a traveler, and that a neighbor or townsman of the inn-keeper may be a guest; but not if he chances merely to cross the threshold or to sit in

1. Walling vs. Potter, 35 Conn., 183;
2. Atkinson vs. Sellers, 5 C. R. N. S., 442;
3. 1 Chitty Cont., 11th Am. Ed., 674;
4. Jacobs' Law Dictionary;
5. Cayle's Case, 8 Coke, 32;
6. Clute vs. Wiggins, 14 Johns., 451;
7. Jalie vs. Cardinal, 35 Wis., 118;

the public room, where he would be a caller or special customer.¹

In a recent case in the Third Department of this State, defendant, who kept a hotel, issued invitations to a "Fourth of July party," to be held at his house. Defendant provided music, a supper, and stabling for horses for the sum of two dollars. Plaintiff, who received one of these cards, went to defendant's hotel, on the night of the dance, with a horse and buggy, which he put in a barn defendant had engaged for this occasion, under the direction of defendant's servant. Plaintiff attended the ball, had supper and paid his bill, also drinking at the hotel. The horse was injured and the court held that the relation of inn-keeper and guest did not exist; that plaintiff came on invitation of the defendant, not as to an inn, but to attend a ball; that he was not a traveler, and would have had no right to come there had he not been invited; that the purchasing of liquor, while under some circumstances it might be sufficient to create the relation of host and guest, only shows that it is not the amount of refreshments purchased, but the character under which the purchaser buys them which determines the relation.² The purchasing of liquor is sufficient to constitute the relation of host and guest.³

USING INN FOR IMMORAL PURPOSES.

If a person desire to make use of an inn for other

- 1, Schouler on Bailments, 255, citing 35 Conn., 183, and Story on Bailments, § 477, 8 Co., 32, Bac. Abr., Inns, C. 5;
- 2, Fitch vs. Casler, 17 Hun, 126;
- 3, McDonald vs. Edgerton, 5 Barb., 560; Bennett vs. Mellor, 5 T. R., 273;

purposes than that of a temporary abiding place, or for illegal or immoral purposes, it seems that he will not be entitled to protection as a guest of the innkeeper, and so, the furnishing of a prostitute with board and lodgings has been held to be an immoral contract.¹

In a Wisconsin case it appeared that the plaintiff who lived in the same town with and very near the defendant's hotel, went there at midnight with a disreputable woman, registered as man and wife, and was assigned a room. At the same time he delivered the clerk some money for safe keeping. The clerk absconded with the money and the court held that the plaintiff could not recover the amount from the innkeeper, as he was not a guest.² In the opinion of Cole, C. J., he said: "The material, perhaps necessary inference from the plaintiff's own testimony is that he went to the defendant's hotel at midnight with a prostitute and engaged a room solely for the purpose of having intercourse with the woman. True, he says that he went to the hotel as a guest and asked the clerk if he could stay there for bed and breakfast. But, he lived near by, gave no reason why he did not go to his usual lodging place, therefore we feel justified in assuming he went to the hotel for the unlawful purpose above indicated. While the definition of guest has been somewhat extended from its original meaning, it does not include every one who goes to an inn for convenience to accomplish some purpose. If a man and woman go together or meet

1, *Mackabee vs. Griffith*, 2 Cranch, C. C., 336; compare with *Loyd vs. Johnson*, 1 B. & P., 340, 2 Chit. Cont., 11th Am. Ed., 981;

2, *Curtis vs. Murphy*, 63 Wisconsin, 4; 53 Am. Rep., 242.

by concert at an inn or hotel in the town or city where they reside, and take a room for no other purpose than to have illicit intercourse, can it be that the law protects them as guests? Is the extraordinary rule of liability which was originally adopted from considerations of public policy to protect travelers and wayfarers not merely from the negligence but the dishonesty of inn-keepers and their servants, to be extended to such persons? If so, then for a like purpose it should protect a thief who takes a room at an inn and improves the opportunity thus given to enter the rooms and steal the goods of guests and boarders. We do not think that the relation of inn-keeper and guest can or does arise in the cases supposed. One whose status is a guest, is a traveler, or transient comer, who puts up at an inn for a lawful purpose, to receive its customary lodging and entertainment."

GUEST MUST TAKE UP HIS ABODE AT INN.

The traveler must have actually taken up his temporary abode at the inn before the relation of inn-keeper and guest, with its attendant responsibilities and duties, can be created.

This principle was illustrated in a case where the plaintiff arrived at Toronto from Ireland and drove from the railway depot to the hotel of the defendant, having a portmanteau. He asked for a room, saying he only wanted to change his clothes and go to see his friends, and had his things taken to the room; after occupying it for about an hour he went to his friends, with whom he remained. It was held that he was not a guest at the inn.¹

1, *Lynor vs. Massop*, 36 Q. B., U. C., 230;

Cockburg, J., says: "Of course a man could not be said to be a traveler who goes to a place merely for the purpose of taking refreshment. But if he goes to an inn for refreshment in the course of a journey, whether of business or of pleasure, he is entitled to demand refreshment and the inn-keeper is justified in supplying it."¹ If a traveler have no personal entertainment at an inn, but simply care and food for his horse, he may be a guest, for he makes the inn his temporary abode, his home for the time being.² The plaintiff having accepted an invitation to dine with his uncle, a guest at defendant's inn, went there, and not finding his uncle, entered the dining room, ordered and took dinner. When he came out he went with his uncle to another dining room in the hotel and took dinner with him there. On going into this latter room he left his coat upon a rack outside, and when he came out it could not be found and was never recovered. It was held that the landlord was not liable for the loss and that the relation of inn-keeper and guest did not exist between the parties.³ This case does not seem to be entirely in harmony with one arising in Minnesota, where it was held that a person who visits a boarder at an inn is a guest and the inn-keeper is liable to him for the loss of any of his goods, though not of those of the boarder whom he is visiting.⁴ But the circumstances of the two cases were widely different, as in the latter case the visitor made a protracted stay of several weeks.

1, *Atkinson vs. Sellers*, 5 C. B. (N. S.), 442;

2, *Ingalsbee vs. Wood*, 36 Barb., 452; *Coykendall vs. Eaton*, 55 Barb., 188;

3, *Gastenhofer vs. Clair*, 10 Daly, 265;

4, *Lusk vs. Belote*, 22 Minn., 468;

In a case recently arising in Ohio it appeared that the keeper of a gambling-house closed his night's business at 2 o'clock A. M., having a sum of money upon his person, and not being ready to retire for the night, and not wishing to carry his money upon his person at that time of the night, visited an inn for the purpose of depositing his money for safe keeping; he found the inn in charge of a night clerk, inquired if he could have lodgings for the night, and was told that he could; he stated that he did not desire to go to his room at that time, but wished to leave some money with the clerk, and would return in about half an hour. The clerk told him he would reserve a good room for him. He did not register his name, nor was it upon any book of the inn. No room was assigned to him. He left his package of money with the clerk, received a check for it and departed. He returned in about three hours to have a room assigned to him and retire for the balance of the morning. The clerk had absconded with the money, and it was held that the person who made the deposit was not a guest of the hotel at the time he deposited his money with the clerk and that the inn-keeper was not liable for its loss.¹

In a leading English case the following opinions were given, the plaintiff having suffered a nonsuit in the court below: LORD COLERIDGE, J.—This rule must be discharged. The facts according to my view of them are that the plaintiff stopped at Carlisle station and having the intention of remaining the night at defendant's hotel, gave the luggage to the hotel porter to take to the hotel. When he arrived at the

¹, *Arcade Hotel Co. vs. Wiatt*, 2 *Western Rep.*, 368;

hotel he received a telegram, which caused him to change his mind. He gave up the intention of being a guest at the hotel for the night, but he wanted some refreshment. He accordingly went to the coffee-room, but was told he would be better able to get what he wanted if he went to the refreshment room, which is part of the railway station and not the hotel, though connected therewith by a covered way. The plaintiff went there and told the porter to put his luggage in the lock-up room. Some portion of his luggage was abstracted and part returned to him in a damaged condition. Now in order that the plaintiff may recover there must be some evidence that at the time of the loss he was such a guest as to make the inn-keeper liable. I can see no ground for saying that in any sense of the word he was a guest. We do not lay down that there can be no action in this case. If the defendants were bailees and have failed in their duty as such bailees, they may be liable; but here they are sued as inn-keepers.

MATTHEWS, J.—I am of the same opinion. Mr. Ambrose was pressed as to where the contract to establish the relation of landlord and guest arose. The luggage was intrusted to the hotel porter on the assumption that the plaintiff intended to become a guest at the hotel. The plaintiff had not in fact made up his mind. On receiving a telegram he decided otherwise and told the porter to put his luggage in the lock-up room. This is the same, to my mind, as if the plaintiff had said when he got out of the train at Carlisle that he had not made up his mind about staying at the hotel, but if he did not stay, would the porter mind putting his luggage in the lock-up room

for him? I see no evidence that the plaintiff was a guest.¹

GUEST AND BOARDER DISTINGUISHED.

If a person when he first arrives at an inn, makes a *special agreement* as to board, or for the use of a certain room in the establishment, it has been held he never becomes a guest and he is merely a boarder while he remains there. To any such person the inn-keeper is not liable in his public capacity, but only as an ordinary bailee.* In the case of *Hancock* against *Rand*,³ it appeared that General Hancock, an officer in the U. S. army, being liable to be called to remote places by order of the Government, went to the St. Cloud hotel, in New York City, in November, 1873, and applied for rooms and board for himself and family. He stated to defendants that he expected to remain until the following Summer, provided everything was satisfactory and provided also he was not sooner called away on military duty, and the rooms were accepted on these conditions. The General and family took their meals at the hotel restaurant, paying for each meal the same as other guests. No notice was posted in the rooms occupied by them, as prescribed by the act of 1855. In an action to recover the value of property of plaintiff stolen from these rooms while so occupied, it was held that the facts justified a finding that the relation between the par-

- 1, *Strauss vs. County Hotel & Wine Co.*, 49 L. T., Rep., (N S.);
- 2, *Chamberlain vs. Masterson*, 26 Alab., 371; *Manning vs. Wells*, 9 Humph., 746; *Ewart vs. Stark*, 8 Rich., 423; *Hursh vs. Beyers*, 29 Mo., 469; *Parkhurst vs. Foster*, Salk., 388; *Parker vs. Flint*, 12 Mod., 255;
- 3, *Hancock vs. Rand*, 94 N. Y., 1;

ties was that of inn-keeper and guest, and so that defendants were liable. It appeared that defendants kept separate apartments for boarders and for transient persons, and that Hancock and family were registered as boarders. It was held in the absence of proof that Hancock knew of this fact that the liability of the defendants was not affected thereby. It appeared that Hancock and family for several years prior to their going to defendants' hotel had been boarding at another hotel in the same city, and it was held that this did not affect the question of their relationship with defendants, nor establish that they were citizens of that city. In this case, Judge Miller of the Court of Appeals, observed: "Really and actually he was but a transient guest who had the right to come and go whenever he pleased. Officers of the army and navy, and soldiers, who have no permanent residence which they call home, may well be regarded as travelers or wayfarers, when stopping at public inns or hotels, and to make them chargeable as boarders it should be shown satisfactorily that an explicit contract had been made which deprived them of the privileges and rights which their vocation conferred upon them as passengers or travelers. The authorities hold that the fixing of a price does not make the party a boarder (citing 33 California, 557; 7 Cushing, 417; 53 Maine, 169; 35 Conn., 188;)."

In the General Term opinion in *Hancock vs. Rand*, the court said: "Although the decisions have not been uniform upon the question whether fixing in advance the price to be paid and the duration of the stay of a visitor at a hotel has the effect in law to constitute such person a mere boarder or lodger, and to

deprive him of the character of guest, yet our examination of the subject has led to the conclusion that regarding hotels as they are now conducted and patronized, such an arrangement does not necessarily have an effect to prevent the relation of inn-keeper and guest, and the obligations which attach thereto. The law which renders the keeper of a hotel liable for the baggage of the guest, which is stolen from the room assigned him, and which remains in the care and supervision of the landlord, and the servants whom he selects, is salutary, and should not be rendered substantially inoperative by adopting technical distinctions which rest upon ingenious speculation rather than sound reason."¹

In the Albany Law Journal of July 26, 1879, the editor criticised the decision in *Hancock* against *Rand*, and inclined to the opinion that General Hancock was a boarder and not a guest for the following reasons: 1, The relation between Hancock and Rand was founded upon contract. Upon a breach of this agreement, upon refusal to pay for the rooms for nine months unless sooner ordered away, Rand would have his action for damages. 2, Specific rooms were engaged for nine months which during that time belonged to Hancock. 3, Hancock was not a traveler; the St. Cloud was his only home. This case was distinguished in 1885, in New Mexico, as decided on the ground that officers in the army and navy, and soldiers and sailors are to be considered *prima facie* as wayfarers and transients; the contrary was held of trainmen on railroads.²

1, *Hancock vs. Rand*, 17 Hun, 279; see also 21 Moak Eng., 565;

2, *Harvey vs. Harvey*, 5 Pacific Rep., 329;

In a case recently arising in Minnesota a somewhat similar state of facts existed to those in *Hancock vs. Rand*. The plaintiff was not a resident of the State, but at the time they came to defendant's inn his wife and children had been living at St. Paul about four years, sometimes boarding and sometimes keeping house, the plaintiff visiting them several times a year. The plaintiff came to defendant's hotel and remained about four weeks. There was an agreement for special rates for himself and family lower than transient rates, but no agreement as to the length of plaintiff's personal sojourn. The plaintiff's watch and some of the children's jewelry were stolen. The court held that plaintiff himself was a guest and traveler but that the children were not, and allowed a recovery for the watch, but not for the jewelry. The court said: "This strict liability exists only in favor of travelers." As to the family it was stated: "They must be regarded as *in fact* dwellers in and inhabitants of St. Paul. They certainly were not travelers in any just sense of the term." As to the husband it was said: "He was received as a traveler and in no other character. His status as a traveler once shown to exist, is to be presumed to have continued. Neither the agreement by which he was to pay special rates for himself and family lower than those ordinarily charged for transient guests, nor the fact that he remained in the inn for a month, nor, so far as we can discover, any other fact which appeared in the case, furnish any evidence that his character was changed from that of a traveler to that of a boarder."¹

The common law rule was thus stated: If a

1, Lusk vs. Belote, 22 Minn., 468;

neighbor beg a night's lodging and lose anything during his stay, the host is not liable. The person robbed must be a traveler and guest.¹ Where a man boards or sojourns at an inn under special agreement and is robbed, the inn-keeper shall not be answerable.² If the inn-keeper invites one to supper, and, it being late, asks him to stay all night and he is robbed, the inn-keeper is not liable because he was not there as a guest.³

Judge Daly distinguishes the relations of guest and boarder as follows: "A guest as distinguished from a boarder is bound for no stipulated time. He stops at the inn for as short or as long time as he pleases, paying while he remains, the customary charge. While he occupies the position of a guest the inn-keeper has a lien upon his effects, and may detain them until he is paid for the accommodation which has been furnished; but if he and the inn-keeper enter into a special agreement for any fixed period, at a stipulated price, he ceases to be a guest and becomes a boarder. The inn-keeper relies upon the special agreement and has no longer a lien upon the effects. In modern times, and especially in cities, the practice has become very general of furnishing accommodation by the week or by the month at a fixed rate, or as the parties may agree, and the persons who furnish accommodation in this way are distinguished as keepers of boarding-houses."⁴

The length of time a man is at an inn makes no difference, whether he stays a week, or a month, or

1, 8 Co., 32, Cro. Jac., 224;

2, See Bird's Select Cases, 54; Latch., 127;

3, Carr's Cas., Co., 32, b;

4, Stewart vs. McCready, 24 How. Pr., 62;

longer; so although he is not strictly transient, he retains his character as a traveler.¹ A guest does not lose his character as such by proposing, after his arrival, to the landlord to remain a certain time, nor by ascertaining the charges, nor by paying in advance, nor from time to time as his wants are supplied.² It is also maintained that if after taking quarters at an inn, one should make an arrangement with the landlord to pay a certain price per week for his board if he stayed a certain time, he does not thereby cease to become a guest.³ The distinction is made by Story as follows:⁴ "The length of time that a man is at an inn makes no difference; whether he stays a week, or a month, or longer; so always that, although he is not strictly *transiens*, he retains his character as a traveler. And if he still is in reality a traveler, the making of a special agreement with the inn-keeper for the price of his board by the week, will not change his character as a guest and make him a mere boarder."

But if a person comes upon a special contract to board, and sojourn at an inn, he is not, in the sense of the law a guest; but he is deemed a boarder. "If an inhabitant of a place makes a special contract with an inn-keeper there for board at his inn, he is a boarder and not a guest."⁵ The doctrine of Cayle's case was thus interpreted: "If a neighbor of the inn-keeper come to the inn-keeper, he shall not answer to the

1, *Mowers vs. Fethers*, 61 N. Y., 34;

2, *Pinkerton vs. Woodward*, 33 Cal., 557;

3, *Shoecroft vs. Bailey*, 25 Iowa, 553; *Berkshire Woolen Co. vs. Proctor*, 7 Cush., 417; *Hall vs. Pike*, 100 Mass., 495;

4, *Story on Bailments*, § 477;

5, *Norcross vs. Norcross*, 53 Maine, 163 :

goods, for he is not lodged, but as a tippler.”¹ Judge Redfield says that where one lives in the same town he cannot compel the inn-keeper to receive him as a guest, but undoubtedly by special agreement the inn-keeper may receive him as such and if he do, cannot excuse himself from his ordinary responsibility by showing that his guest was not a traveler.² In a recent case arising in Massachusetts it appeared that the plaintiff, a mechanic, a resident of New Brunswick, but who had been living in Boston, was employed on a building at Cambridge which is practically a part of Boston, and gave up his boarding-house in Boston and went to defendant’s house. Articles were stolen from his room, and he sued as a guest, not alleging negligence, and recovered. The court held it was a question of fact, to be determined from all the evidence, whether the plaintiff sustained the relation of guest or boarder at defendant’s inn at the time of the loss of the articles sued for.³

GUEST NEED NOT DISCLOSE NAME.

The inn-keeper cannot compel a guest to sign his name in the hotel register. He has no right to pry into his secrets and demand his name and address, and the guest is justified in refusing to disclose his identity to the host.⁴

DISAGREEABLE GUESTS.

It was held in Pennsylvania that if a guest made

- 1, Warbrook vs. Griffin, 2 Brown & Gold., 254;
- 2, See note to Walling vs. Potter, 9 Am. Law. Reg., 618, 620;
- 3, Hall vs. Pike, 100 Mass., 495;
- 4, Rex vs. Ivens, 7 C. & P., 213;

himself extremely disagreeable to other guests of the hotel, the inn-keeper had a right to require him to leave the house, and if he did not go upon request, the inn-keeper might lay his hands gently upon him and lead him out, and if resistance was made, he might use sufficient force to accomplish the desired end.¹ But the court reversed this later on and held it to be assault and battery to eject a guest in this manner.* The Illinois courts have maintained a similar doctrine,³ and this seems to be the established rule of law on that subject. In an English case it appeared that the plaintiff was a cabin passenger on a vessel, having paid his fare as such passenger. He was in the habit of reaching across others at table to help himself, and to take the food he was eating in his fingers while eating in the presence of other guests. The captain on account of his conduct and lack of politeness, refused to treat him as a cabin passenger, and excluded him from the cabin and from the weather side of the ship. After landing, the disagreeable passenger brought action against the captain to recover damages for breach of the agreement to carry plaintiff as a cabin passenger. The defendant set up the offensive conduct of the passenger, but he was held liable to respond in damages. Chief Justice Tindal remarked that it would be difficult to say what degree of polish would, in point of law, warrant a captain in excluding out from the cuddy. Conduct unbecoming a gentleman might, he thought, in the strict sense of the word, possibly justify such action.⁴

1, *Commonwealth vs. Mitchell*, 2 Pars. Sel. Cas., 431;

2, *Commonwealth vs. Mitchell*, 1 Philadelphia, 63;

3, See *Kelsey vs. Henry*, 49 Ill., 488;

4, *Pendergast vs. Compton*, 8 Carr. & Payne, 454;

GUEST HAVING CONTAGIOUS DISEASE.

Where a guest at a hotel is taken ill with a contagious disease likely to be communicated to others, the proprietor of the hotel, after notice, has the right to remove the guest in a careful and becoming manner, at an appropriate hour, to some hospital or other place of safety, provided the life of the guest is not imperiled thereby; or he may make any reasonable agreement for extra compensation in allowing the guest to remain, but if such compensation is not founded upon mutual assent, but an arbitrary assessment is exacted by threats of removal when the guest is not in a condition to be removed, or at a time and in a manner not warranted by the circumstances, then such amount obtained by duress may be recovered back by the person from whom it was wrongfully exacted.¹

GUEST CONTRACTING DISEASE AT INN.

The inn-keeper knowing that there was small pox in his inn, kept it open for business and received the plaintiff as a guest. The plaintiff did not know there was small pox in the inn but had heard rumors to that effect; she contracted the disease while at the inn and it was held that defendant was liable.² In this case the judge said: "The District Court left it to the jury to determine whether plaintiff was guilty of imprudence or negligence in going to the hotel after she heard the rumor that the disease was in the house, without inquiring further as to its truth; and they were told that if the circumstances were such as that ordinary prudence and care demanded that she

1, *Levy vs. Corey*, 1 City Ct. Supp., 57;

2, *Gilbert vs. Hoffman*, 66 Iowa, 205; 55 Am. Rep., 263;

should before going to the hotel make further inquiry as to the truth of the rumor, and she neglected to do this, and this neglect contributed to the injury, she could not recover. The instruction states the rule on the subject quite as favorably to the defendants as they had a right to demand. By keeping their hotel open for business they in effect represented to all travelers that it was a reasonably safe place at which to stop, and they are hardly in a position now to insist that one who accepted and acted on this representation and was injured because of its untruth, shall be precluded from recovering against them for the injury, on the ground that she might by further inquiry have learned of its falsity." In this case the plaintiff contracted the disorder at defendant's hotel, was removed to a pest house, endured much suffering and was permanently disfigured for life. The defendant was adjudged liable for the damages.

TEMPORARY ABSENCE OF GUEST.

If the guest goes out to view the town, in which the hotel is situate, intending to return, the inn-keeper is liable for the property lost during his absence.¹ And he is liable in the same way if a guest goes out and says he will return at night.² Justice Bronson observes: "Now when a man, after he has actually become a guest and delivered his property to the host, goes away for a brief period, leaving his goods behind him, the law is chargeable with no absurdity in considering him as still continuing a guest, so far as relates to the rights and liabilities of the parties."³ When a

1 2 Croke's Rep., 189;

2 1 Comyn's Dig., 421, 423; see McDonald vs. Edgerton, 5 Barb., 563;

3, Grinnell vs. Cook, 3 Hill, 490;

man came to an inn with a hamper of hats which he left two days while he went away, it was held he could not hold the inn-keeper responsible as he was not a guest and the inn-keeper had no benefit from keeping the property.¹

SOLICITING GUESTS.

It is held in New Hampshire that a stage driver may enter an inn and go into the public room where travelers are usually placed to solicit passengers for his coach, if he has a reasonable expectation that passengers are there, comes at a suitable time and in a proper manner, conducts himself properly, remains no longer than is necessary and does no injury to the inn-keeper, and he may do this notwithstanding the inn-keeper's prohibition, if the inn-keeper accord the same privileges to the drivers of other coaches. The driver may forfeit these rights by his misconduct, as by causing affrays or quarrels, making a noise, disturbing guests in the house, interfering with its due regulations, intruding into private rooms, remaining longer than is necessary after being requested to depart, or by improper importunity to guests, and if he is guilty of any of these acts of misconduct or impropriety, the inn-keeper may prohibit him from entering his inn, and treat him as a trespasser if he disregards such prohibition. One who enters an inn lawfully may become a trespasser *ab initio*, and treated as such, if after entry, he commits an assault upon the owner or a trespass upon his property.² An inn-keeper soliciting guests for his inn, may be ejected from a railroad depot.³

1, Mich., 5 Jac., B. R.;

2, Markham vs. Brown, 8 N. H., 523;

3, Com. vs. Power, 7 Met., 596;

INN-KEEPER MAY SELECT GUEST'S ROOM.

The landlord has the sole right of selecting the rooms for each guest, and, if he finds it desirable, he may change the room and assign the guest another. There is no implied contract that a guest shall retain a room that has been given him so long as he chooses to pay for it.¹ The guest has a mere easement of sleeping in one room, and drinking and eating in another.² The legal possession of the room is in the landlord; the guest has only the use of the chamber for the time being.³ The inn-keeper is not bound to comply with the caprices of his guests, and although an inn-keeper cannot make his guest go to bed, nor turn him out of doors because he does not choose to sleep, the guest cannot insist on having a bedroom in which to sit up all night if he is furnished with another room proper for that purpose.⁴

GUEST MAY PREVENT INTRUSION.

The possession which a guest has of his room in a hotel is held to be such as will enable him to maintain trespass if any person unlawfully enter his room;⁵ but he cannot bring such an action against the inn-keeper if he should enter for any proper purpose.⁶ As the inn-keeper was held to be under no legal obligation to keep the bodies of his guests safe, but their baggage only, he should have recourse to his action if any enter and assault him.⁷ It seems that the guest

- 1, Doyle vs. Walker, 26 Q. B. (Ont.), 502;
- 2, Lane vs. Dixon, M. G. & S., 784;
- 3, Rodgers vs. People, 86 N. Y., 360;
- 4, Fell vs. Knight, 8 Mes. & Wel., 276;
- 5, Doyle vs. Walker, 26 U. C. R., 502; Graham vs. Peat, 1 East, 246;
- 6, Doyle vs. Walker, *supra*;
- 7, Cayle's Case, 8 Co., 32;

will be protected in resisting an invasion of his room, and may prevent it if he can. In an English case, it appeared that Mr. Ford, of Gray's-Inn, with other company was at a public house, and another company, bringing with them lewd women, would have that room where Ford and his company were, and turn him out. Ford answered if they had civilly desired it they might have had it, but he would not be turned out by force, whereupon they drew swords, and Ford drew his and killed one of the party who were attempting to force an entrance. It was adjudged that his act was justifiable in defense of the room he had taken up.¹

UNWHOLESOME FOOD.

A publican selling unwholesome drink or victuals may be indicted for a misdemeanor at common law; and the recipient of his unfit accommodations may maintain an action for the injury done.² This is so even if a servant provides the goods without the master's express directions.³ If the inn-keeper sell bad wine or bad provision, knowing it to be so, an action of deceit lies against him, and so if his servant sells any corrupt thing an action lies against the master, but not the servant.⁴

USE OF IMITATION BUTTER AND CHEESE.

The legislature of this State enacted in 1886, an act to amend the act previously passed, to prevent deception in the sale of dairy products, and to preserve the public health. By section 7 of that amend-

1, Bird's Select Cases, 53;

2, Roll, Abr., 95;

3, 1 Blackstone's Commentaries, 430;

4, Bird's Select Cases, 53;

ed act, (chapter 577, Laws 1886,) it was provided that no person by himself or his agents or servants shall render or manufacture out of any animal fat or animal or vegetable oils not produced from unadulterated milk or cream from the same, any article in imitation or semblance of natural butter or cheese produced from pure, unadulterated milk or cream of the same, nor mix, compound with, or add to milk, cream or butter any acids or other deleterious substance or any animal fats or animal or vegetable oils not produced from milk or cream, so as to produce any article or substance or any human food in imitation or semblance of natural butter or cheese, nor sell, keep for sale, or offer for sale, any article, substance or compound made, manufactured or produced in violation of that section, whether such article, substance or compound shall be made or produced in this State or elsewhere. It is further provided that this section shall not be so construed as to require evidence of a willful or intentional violation thereof. Whoever violates the provisions of this section is guilty of a misdemeanor, punishable by a fine of not less than one hundred dollars, nor more than five hundred dollars, or not less than six months' or more than one year's imprisonment for the first offense, and by imprisonment for one year for each subsequent offense.

By chapter 583, of the laws of 1887, another amendment is made to this statute, and among other provisions it is declared that no keeper or proprietor of any bakery, hotel, tavern, boarding-house, restaurant, saloon, lunch counter, or place of public entertainment, or any person having charge thereof or employed thereat, shall keep, use or serve therein,

either as food for their guests, boarders, patrons or customers, or for cooking purposes, any article made in violation of the provisions of this section above referred to. This new section, it is declared, shall not be construed to require evidence of a willful or intentional violation thereof. Whoever violates its provisions is declared guilty of a misdemeanor and punished by a fine of not less than fifty dollars, nor more than two hundred dollars, nor not less than ten days' or more than thirty days' imprisonment for the first offense, and by imprisonment for one year for each subsequent offense.

The penalty for the first offense is materially lessened when the offending party is the keeper of an inn, boarding-house, etc., as will be observed. For the second offense it is the same as the manufacturer.

LIABILITY OF GUEST FOR INN-KEEPER'S PROPERTY.

A guest at an inn is not an insurer of the landlord's property which may be in his room so that he is liable for ordinary breakage occurring from use. The guest is a bailee of the property of the inn-keeper which may come into his hands, but he is only called upon to use the same care in its use that an ordinary prudent man would use, for the contract is one of that class of bailments known to the law as *locatio*, or letting for hire. The guest is bound to return or leave the inn-keeper's chattels which he may have used, in as good condition as when he came into their possession, ordinary wear and tear and reasonable use excepted. He is not liable for any injury which occurred to the property without his negligence.¹ It is

¹, See Jones on Bailments, 88;

a well settled rule that the owner of the property lets it subject to ordinary risks, but not to risks occasioned by negligence or want of ordinary prudence of the person hiring it.¹ The reason for this rule is that the contract is for the benefit of both parties to the transaction, and the same liability does not attach as to a simple depository or mandator.

NEGLIGENCE OF THE GUEST.

The guest may by his own negligence absolve the inn-keeper from all liability for his property. Accordingly when a guest arrived at an inn with a portmanteau containing a considerable sum of money, which he left with the other baggage in the hall, and neglected to inform the landlord of its value, it was held the inn-keeper was not liable for the loss of the money, and that a jury were warranted in finding the guest had been guilty of gross negligence so as to exonerate the landlord.² In another case the learned Earl, J., stated he thought the rule of law resulting from all the authorities was, that in a case like the one at bar, the goods always remained under the charge of the inn-keeper and the protection of the inn, so as to make the landlord liable as for breach of duty, unless the negligence of the guest occasions the loss, in such a way as that it would not have happened if the guest had used the ordinary care that a prudent man might reasonably have been expected to take under the circumstances.³ Where a commercial agent obtained a room from the landlord in which to exhibit

- 1, Addison on Contracts, 415;
- 2, See Kent's Commentaries, Vol. II, 586;
- 3, Fowler vs. Dorton, 24 Barber, 384;
- 4, Cashill vs. Wright, 6 El. & B., 898;

goods to his customers, and although the landlady told him to lock the door, he omitted to do so, and his goods were lost, it was held that the inn-keeper was not responsible.¹ In this case it appeared that a stranger had twice put his head in the door while the agent was showing his goods, and the court thought that a circumstance of a suspicious nature having arisen, it was incumbent on the guest to use at least ordinary diligence, and especially so when he was occupying the room for a special purpose, and that he was bound to exercise at least ordinary care. In another instance a commercial agent who was the guest of an inn, placed a box containing money in the commercial room of the house, which was kept there several nights. The box had an insecure lock, and the agent several times opened it in the presence of others and counted his money. The money was missed and in a suit against the landlord the judge charged the jury that gross negligence of the guest would relieve the inn-keeper from his common-law liability; the jury found for the defendant. The court affirmed the doctrine laid down by the presiding judge in his charge, and it was doubted if there must in all cases be gross negligence of the guest to absolve the inn-keeper from liability.² It is held that if an inn-keeper has no room for a guest and tells him so, and yet the guest insists on admission, and will shift for himself or if he occupies the room of another without the consent of the landlord or his servants, the inn-keeper is not liable for the goods and chattels of the traveler unless he can show that they were lost or stolen

1, Burgess vs. Clements, 14 Moore & S., 306;

2, Armistead vs. White, 29 Law J., Q. B., 524;

through the negligence of the inn-keeper or his servants.¹

In the case of *Oppenheim* against the *White Lion Hotel Company*, (L. R., 6 C. P., 515.) one of the judges said that there was no obligation on a guest to lock his bed-room door while stopping at an inn, but the fact of the guest having means of securing himself and choosing not to use them is one which, with the other circumstances of the case, should be submitted to the consideration of the jury. Much depends upon the state of society at the time and place, and what would be prudent at a small hotel in a small town, might be the extreme of imprudence at a large hotel in a large city. Earl, J., of the New York Court of Appeals, says: "At common law the negligence of the guest in the care of his goods generally exempts the landlord from liability for their loss."² In another New York case it was held that an omission to lock the door does not relieve the inn-keeper from liability from robbery. The judge who delivered the opinion said that Cayle's case had not thus far been overruled or questioned in this State, and he could see no reason why it should be.³

In the case already cited of *Burgess vs. Clements*, Lord Ellenborough said: "The law obliges an inn-keeper to keep the goods of persons coming to his inn, *causa hospitandi*, safely, so that in the language of the writ, *pro defectu hospitatoris hospitibus damnum non eveniat ullo modo*, and I do not say, that if the goods be stolen from the inn, it is not, *prima facie*, to,

1, 1 Andess, 29;

2, Rosenplanter vs. Roselle, 54 N. Y., 268;

3, Classen vs. Leopold, 2 Sweeney, 705; see also Cayle's Case, 8 Co., 32;

be taken as happening through the fault of the inn-keeper. But there can be no doubt also, that there may be circumstances, as, if the guest, by his own neglect, induces the loss, or introduces himself the person who purloins the goods; which forms an exception to the general liability, as not coming within the words, *pro defectu hospitatoris*; and under such circumstances the plaintiff shall not complain of the loss. Now an inn-keeper is not bound by law to find shew rooms for his guests, but only convenient lodging rooms and lodging. As to what is laid down in Cayle's case, respecting the delivery of the key to the guest, it plainly relates to the chamber door in which he is lodged, and I agree that if the inn-keeper gives the key of the chamber to his guest, this will not dispense with his own care, or discharge him from his general responsibility as inn-keeper. But if there be evidence that the guest accepted the key, and took on himself the care of his goods, surely it is for the jury to determine, whether this evidence of his receiving the key, proves that he did it *animo custodiendi*, and with a purpose of exempting the inn-keeper, or whether he took it merely because the landlord forced it on him, or for the sake of securing greater privacy, in order to prevent persons from intruding themselves into his room. The cases show that the rule is not so inveterate against the inn-keeper, but that the guest may exonerate him by his fault, as, if the goods are carried away by the guest's servant or companion, whom he brings with him. For thus it is laid down in Cayle's case, that if the servant of the guest, or he who comes with him, or he whom he desires to be lodged with him, steal or carry away the goods, the

inn-keeper shall not be charged; for then the fault is in the guest to have such a companion or servant, which shews that for such damage as is occasioned by the misconduct of the guest, he should not be entitled to complain, or to have any recompense. Now what is the conduct of the plaintiff in this case, the inn-keeper not being bound to find him in any more than lodging, and a convenient room for refreshment? This does not satisfy his object, but he enquires for a third room, for the purpose of exposing in it his wares to view, and of introducing a number of persons, over whom the inn-keeper can have no check or control; and thus, as it seems to me, for a purpose wholly alien from the ordinary purpose of an inn, which is *ad hospitandos homines*. Therefore, the care of these goods hardly falls within the limits of the defendant's duty as inn-keeper. Besides, after the circumstances relating to the stranger took place, which might well have awakened the plaintiff's suspicion, it became his duty, in whatever room he might be, to use at least ordinary diligence; and particularly so, as he was occupying a chamber for a special purpose. For, in general, though a traveler who resorts to an inn, may rest on the protection which the law casts around him, yet, if circumstances of suspicion arise, he must exercise ordinary care. It seems to me, that this room was not trusted to the plaintiff in the ordinary character of a guest frequenting an inn, but that he must be understood as having taken a special charge of it; and that he was bound to use ordinary care for the safe keeping of his goods; and that it is owing to his neglect, and not to the fault of the inn-keeper, that the loss has happened. And this was a question which it was proper to leave to the jury."

In the same case Le Blanc, J., also said: "There can be no doubt as to the liability of the inn-keeper to look to the safe-keeping of every person's goods, who comes to his inn as his guest, and negligence will be imputed to him when the loss is not to be ascribed to any other known cause. It seems to me that this is consistent with Cayle's case, and the other cases; for the place to which that principle was applied is not a room which the guest has selected for some particular purposes, but the chamber in which he is lodged as a guest; and then it is certainly true, that the inn-keeper is not excused in saying that he delivered the key to the guest, and that he left the chamber door open. This may well be, and yet in this case where the guest applied for the room for a different purpose from that of being lodged there or entertained, the inn-keeper may not be responsible. I think, therefore, the jury were justified in determining that he received the favor, *cum onere*,—that is, that he accepted the chamber to shew his goods in, upon condition of taking them under his own care."

Bayley, J., agreed that the verdict was right and that any other would have been wrong, "inasmuch as the plaintiff has by his own conduct superseded, for a time, the obligation of the inn-keeper.—After a person has specially taken his property into his own care, it is but reasonable, if he means to charge the inn-keeper upon his responsibility, that he should apprise him of it. This, then, is the case of a person at an inn, who requests a chamber for a special purpose, which request is granted, upon a condition to which he must be taken to have assented; he removes into the room with his property, which he has taken

under his own custody, and afterwards leaves the room unprotected, and without making any communication to the inn-keeper which might have put him on his guard as to the protection of it. To hold in such a case that the defendant is liable, would be to make him liable, not for his own negligence, but for the negligence of his guest; for grosser negligence can hardly be stated, and it would be to enable the plaintiff to take advantage of his own negligence which has been the sole cause of the loss."¹

Where a guest at an inn takes his goods from his room into his personal custody and puts them into a place in the inn not designated by the inn-keeper and without his knowledge, and such place is an unusual one, and manifestly hazardous and improper, and they are lost thereby, the inn-keeper is exonerated.²

UNCLAIMED BAGGAGE AT THE INN.

The landlord's duty as to unclaimed baggage and property at an inn is declared by Statute (Laws 1837, Chapter 300) as follows :

SECTION 1. The proprietor or proprietors of the several lines of stages, and the proprietors of the several canal boat lines, and the proprietors of the several steamboats, and the several incorporated railroad companies, and the keepers of the several inns and taverns within this State, who shall have any unclaimed trunks, boxes or baggage within his, their or either of their custody, shall immediately enter the time the same was left, with a proper description thereof, in a book to be by them provided and kept

1, See *Dumbier vs. Day*, 12 Nebraska, 596; 41 Am. Rep., 772;

2, *Fuller vs. Coots*, 18 Ohio St., 343; see *Swan vs. Smith*, 3 N. Y. S. Reporter, 588;

for that purpose. In case the name and residence of the owner shall be ascertained, it shall be the duty of such person who shall have any such property as above specified, to immediately notify the owner thereof by mail.

§ 2. In case there shall not be any information obtained as to the owner, it shall be the duty of the person having possession thereof, to make out a correct written description of all such property as shall have been unclaimed for thirty days, stating the time the same came into his possession, and forward said description to the editor of the State paper, whose duty it shall be, on the first Mondays of July, October, January and April in each year, to publish the same in the State paper once a week for three weeks successively. (See Chapter 133, Laws 1884.)

§ 3. In case the said property shall remain unclaimed for sixty days after the said publication, it shall be the duty of the person or company having possession thereof, to apply to a magistrate of the town or city in which said property is retained, in whose presence and under whose direction said property shall be opened or examined, and an inventory thereof taken by said magistrate; and if the name and residence of the owner is ascertained by such examination, it shall be the duty of the magistrate forthwith to direct a notice thereof to such owner by mail; and if said property shall remain unclaimed for three months after such examination, it shall be the further duty of the person or company having possession thereof to apply to a magistrate as aforesaid; and if said magistrate shall deem such property of sufficient value, he shall cause the same to be sold at public

auction, giving six days' previous notice of the time and place of such sale; and from the proceeds of such sale he shall pay the charges and expenses legally incurred in respect to said property, or a ratable proportion thereof to each claimant, if insufficient for the payment of the whole amount; and the balance of the proceeds of such sale, if any, the said magistrate shall immediately pay to the overseers of the poor of said town or city, for the use of the poor thereof; and the said overseers shall make an entry of such amount, and the time of receiving the same, upon their official records, and it shall be subject, at any time within seven years thereafter, to be reclaimed by and refunded to the owner of such property, his heirs or assigns, on satisfactory proof of such ownership.

§ 4. The person making the entry of unclaimed property as above specified, shall be entitled to twelve and a-half cents for each trunk, box, bale, package or bundle so entered, and shall have a lien on the property so entered, until payment shall be made; and in case any additional expense shall be incurred for printing, the lien shall continue until payment shall be made for such additional expense.

§ 5. In case any person shall neglect or refuse to comply with the provisions of this act, he shall forfeit the sum of five dollars for each and every trunk, box or bundle of baggage so neglected as above specified, to the benefit of any person who shall sue for the same, in his own name, in an action of debt in any court having cognizance thereof.¹

1, N. Y. Revised Statutes, Vol. 3, p. 2261;

CRIMINAL LIABILITY OF GUEST

The Legislature has passed two acts for the protection of inn-keepers, making it a crime to defraud them out of the price of accommodations furnished. The first was in 1867, and is found in chapter 677 of the session laws for that year. It provided as follows:

"Every person who shall, at any hotel or inn, order and receive, or cause to be furnished, any food or accommodation, with intent to defraud the owner or proprietor of such hotel or inn out of the value or price of such food or accommodation; and every person who shall obtain credit at any hotel or inn by the use of any false pretense or device, or by depositing at such hotel or inn any baggage or property of value less than the amount of such credit, or of the bill by such person incurred; and any person who, after obtaining credit or accommodation at any hotel or inn, shall abscond from such hotel or inn, and shall surreptitiously remove his baggage or property therefrom shall, upon conviction, be adjudged guilty of a misdemeanor."

This statute has been abrogated by the provisions of the New York Penal Code, which are given below.

Section 382 of the Penal Code as amended by chapter 645, of the laws of 1886, now reads as follows:

"A person who obtains any food or accommodation at an inn or boarding-house, without paying therefor, with intent to defraud the proprietor or manager thereof, or who obtains credit at an inn or boarding-house, by the use of any false pretense, or who, after obtaining credit or accommodation at an inn or

boarding-house, absconds and surreptitiously removes his baggage therefrom, without paying for his food and accommodation, is guilty of a misdemeanor."

As originally enacted this section did not include boarding-house keepers; the amendment of 1886 enlarged the scope of the act, so as to include boarding-house keepers as well as the proprietors of inns.

CONVERSION OF GUEST'S GOODS.

In an action of trover against a landlord it was held that in order to maintain it an actual conversion of the property must be shown, and that a demand and refusal are not sufficient when the defendant has not at the time possession and control of the goods.¹ It seems that the ground of action against an inn-keeper for the loss of goods is his negligence and therefore wrongful conduct, rather than failure to perform a contract.² Trover will not lie against an inn-keeper without an actual conversion of the goods entrusted to his care.³

ALLOWING DEDUCTIONS FOR ABSENCE.

It was held recently in the First Department of this State that in an action upon account for board and lodging, it is not competent to meet evidence on the part of the defendant tending to show an express contract between the inn-keeper and boarder that absences should be deducted from the charges for board, by proof that it is the custom of hotels not to allow any such deductions. The Judge who delivered the

1, Hallenbeck vs. Fish, 8 Wendell, 547;

2, See People vs. Willett, 26 Barb., 81, s. c. 6 Abb. Pr., 40;

3, Wilkins vs. Earl, 44 N. Y., 188; Needeles vs. Howard, 1 E. D. Smith, 60; Sager vs. Blain, 44 N. Y., 449;

opinion of the court stated as a reason for this doctrine that the claim of defendant, as well as his right to the deduction stood on the alleged express agreement; and such agreement, if made, could neither be disposed of nor be altered by the proof of custom.¹ In case there was no express agreement between the parties the evidence of general custom would doubtless be admissible.

NO RECOVERY FOR LIQUOR TRUSTED.

No inn, tavern or hotel keeper, who shall trust any person other than those who may be lodgers in his house, for any sort of strong or spirituous liquors or wines, shall be capable of recovering the same by any suit. All securities given for such debts shall be void; and the inn, tavern or hotel keeper taking such securities, with intent to evade this provision, shall forfeit double the sum intended to be secured thereby.*

1, Stebbins vs. Brown, 65 Barber, 274;

2, N. Y. Revised Statutes, Vol. 3, p. 1981;

CHAPTER IV.

THE INN-KEEPER'S LIABILITY.

The inn-keeper, occupying as he does a public position, has been subject to a very stringent, unyielding rule of liability for the property of his guest. By the rules of the common law he is liable, not only for the property of his guest which is lost by his fault, or negligence, but for any loss that may occur while such property is *infra hospitum* and while the owner of it is a guest at the inn. The policy of the law has been to render him liable to the same extent as a common carrier of goods for hire, and although a shade of doubt as to this extraordinary responsibility has been cast upon the subject by some text writers and judges, yet, the prevailing doctrine, from the time of Cayle's case down to the present, has been to regard the keeper of a common inn as an insurer of the baggage and effects of all guests. This is founded on sound principles of public policy and is intended to facilitate commerce, as it increases the confidence of travelers who occupy the hostelry for a temporary home. The act of God, the invasion and attack of public enemies, or the carelessness of the guest himself may relieve the inn-keeper from his responsibility, but nothing else will avail him as a plea, if his guest's property be lost or injured. The law requires of him extraordinary diligence in looking after his guest's baggage

are not at liberty to discard the settled rules of the common law, founded on reasons which still operate with all their original force. Open robbery and violence, it is true, are less frequent, as civilization advances; but the devices of fraud multiply with the increase of intelligence, and the temptations which spring from opportunity, keep pace with the growth and diffusion of wealth. The great body of men engaged in this, as in other vocations, are men of character and worth; but the calling is open to all, and the existing rule of protection should, therefore, be steadily maintained. It extends to every case, and secures the highest vigilance on the part of the inn-keeper, by making him responsible for the property of his guest. The traveler is entitled to claim entire security for his goods, as against the landlord, who fixes his own measure of compensation, and holds the property in pledge for the payment of his charges against the owner.

“In case of loss, either the inn-keeper or the guest must be the sufferer; and the common law furnishes the solution of the question, on which of them it should properly fall. In the case of *Cross vs. Andrews*, the rule was tersely stated by the court: ‘The defendant, if he will keep an inn, ought, *at his peril*, to keep safely his guests’ goods.’ (*Cro. Eliz.*, 622.) He must guard them against the incendiary, the burglar and the thief; and he is equally bound to respond for their loss, whether caused by his own negligence or by the depredations of knaves and marauders, within or without the curtilage.”¹

The liability of the inn-keeper as an insurer, pre-

1, *Hulett vs. Swift*, 33 N. Y., 570;

supposes the relations of host and guest. It had its origin in an ancient custom of the realm.¹ "It is clear," says Hare in his recent work on Contracts, (p. 155,) "that where a man is induced to place his person, child, or goods under the care of another, by an assurance that the duty shall be well and effectually performed, the trust will be co-extensive with the words in which it is declared and a recovery can be had in case, whether the breach is due to incompetency or neglect. Attorneys, surgeons, farriers, inn-keepers, common carriers and other persons exercising a public trade or occupation, are within the principle, because they impliedly hold themselves out as skilled in the performance of their respective callings, and ready and willing to serve all who may apply, and they are answerable for declining to act without sufficient cause."

"It is true," says Hunt, J., "that the days of violence, which in early times required this protection to the traveler, have passed away. It is not certain, however, that we are less exposed to fraud. We may have grown wiser and better than our fathers. It is to be hoped we have. It may be, however, a change of manners rather than of morals. The day of the two-handed broad-sword has gone by; that of sleight-of-hand and finesse has come in. A guest is in less danger of being robbed and murdered, but possibly not of being cheated."²

RULE AS TO BOARDERS.

The inn-keeper is not liable for the goods of a

¹, *Ingalsbee vs. Wood*, 33 N. Y., 578;

², *Wilkins vs. Earl*, 44 N. Y., 172-189;

boarder at his inn to the same extent as those belonging to his guests. The boarders are there by special contract, he has no lien upon their personal effects at the inn for the accommodation which he provides for them, and consequently they cannot hold him to be an insurer of such property. He is liable only as a bailee, and in case of loss of any such property by a boarder at the inn, it must be shown that the inn-keeper has been culpably negligent before he can be charged. The following extract from the opinion of a Tennessee judge states the reason for this rule with great clearness: "A passenger or wayfaring man may be an entire stranger. He must put up at the inn to which his day's journey may bring him. It is therefore important that he should be protected by the most stringent rules of law enforcing the liability of the inn-keeper. In such cases therefore the law makes the inn-keeper an insurer of the goods of his guest, except as to losses occasioned by the act of God or public enemies. But as a boarder does not need such protection, the law does not afford it. It is sufficient to give him a remedy when he shall prove the inn-keeper has been guilty of culpable negligence."¹

WHAT IS BAGGAGE.

In considering the question of how far the inn-keeper is liable it is proper to determine what articles may properly be designated as baggage. It is held that the surgical instruments of a physician are a part of his baggage which he may take to an inn.² Whatever a traveler has with him according to the habits

1, Manning vs. Wells, 9 Humph., 746; 51 Am. Dec., 688;
2, Giles vs. Fauntleroy, 13 Md., 126;

and wants of the station of society to which he belongs, either with reference to the immediate necessities or the ultimate purposes of his wanderings, must be considered as personal baggage.¹ The rules of the common law governing an inn-keeper's liability for the safety of his guest's baggage are the same as those which regulate the responsibility of a common carrier for the safety of his passenger's luggage.²

Articles of jewelry, such as one would usually wear, have been held to be baggage;³ the jewels and regalia of a society were held not to be baggage.⁴ The term baggage it is said does not embrace samples of merchandise carried by the passenger in a trunk with a view of enabling him to make bargains for the sale of goods, nor does the term embrace money in the trunk, or articles usually carried about the person and not as baggage.⁵ It is not everything that a wayfarer may have with him while traveling that can be properly termed baggage, so as to hold the inn-keeper liable for it. It has been held that gold spectacles are not baggage;⁶ neither are opera glasses;⁷ a watch is held to be baggage,⁸ although a different doctrine has been promulgated by the Tennessee courts.⁹

1, *Macrow vs. G. W. R. Co.*, 6 Q. B., 622;

2, *Wilkins vs. Earl*, 18 Abb., 190; S. C. 44 N. Y., 172;

3, *Brooke vs. Pickwick*, 4 Bing., 218; *McGill vs. Rowand*, 3 Penn. St., 451;

4, *Nevins vs. Bay State S. B. Co.*, 4 Bosw., 589;

5, *Hawkins vs. Hoffman*, 6 Hill, 586;

6, *Re H. M. Wright*, Newbury Admiralty; *Sasseen vs. Clark*, 37 Georgia, 242;

7, *Toledo & Wabash R. Co. vs. Hammond*, 33 Ind., 379;

8, *Jones vs. Voorhees*, 10 Ohio, 145; *Miss. Co. R. Co. vs. Kennedy*, 41 Miss., 471;

9, *Bonner vs. Maxwell*, 9 Humph., 621;

A hobby-horse is not baggage.¹ Brushes and razors, pens and ink are baggage.² A present may perhaps be considered as baggage.³ The manuscripts of a student are baggage,⁴ but an artist's pencil sketches have been held not to be.⁵ Musical instruments are held not to be baggage, though a dissenting opinion was given by one of the judges.⁶ The tools of a journeyman carpenter can be taken with him on his travels as baggage in Pennsylvania,⁷ but not so in Canada.⁸ It has been held that the wares of a merchant,⁹ the money of a banker,¹⁰ the samples of a commercial traveler,¹¹ the papers of a lawyer,¹² or a sewing machine of a seamstress¹³ were not baggage for which common carriers and inn-keepers could be charged.

It would seem however that there is a distinction in the liability of an inn-keeper and that of a common carrier, who is liable only for such articles as are necessary for the wayfarer on his journey. In support of this proposition we have the opinions of several judges of our Court of Appeals. Says Leonard,

- 1, Hudston vs. Midland Rw., L. R., 4 Q. B., 366;
- 2, Hawkins vs. Hoffman, 6 Hill, 589;
- 3, G. W. R. vs. Shepherd, 8 Ex., 38; but see 4 E. D. Smith, 59;
- 4, Hopkins vs. Wescott, 7 Am. Law Reg., N. S., 533;
- 5, Myton vs. Midland R. W., 4 H. & N., 615; but see Macrow vs. Gt. W. R. W., L. R., 6 Q. B., 622;
- 6, Brutz vs. G. T. R. W., 32 U. C. Q. B., 66;
- 7, Porter vs. Hilderbrand, 14 Pa. St., 129;
- 8, Brutz vs. G. T. R. W., *supra*;
- 9, Gilox vs. Shepherd, 8 Ex., 30; Pardee vs. Drew, 25 Wend., 459; Shaw vs. G. T. R. W., 7 U. C. C. P., 493;
- 10, Phelps vs. London & N. W. R. W., 19 C. B. N. S., 321;
- 11, Belfast B. L. & C. R. W. vs. Keys, 9 Ho. Lords' Cases, 556;
- 12, *Ibid*;
- 13, Brutz vs. G. T. R. W., *supra*;

J.: "There are many reasons of public policy which forbid the rule applicable to common carriers from being incorporated into the law affecting inn or hotel keepers, limiting the liability for the loss of money to sums necessary for traveling expenses."¹ In this same case, Hunt, J., says: "Is there any basis in principle or in the authorities for the distinction made by the defendant, to wit: that an inn-keeper is liable only for such an amount of money as is necessary for the reasonable expenses of the guest? This distinction is sought upon the analogy of a carrier of passengers, who is liable only for money or articles convenient to the traveler on his journey, and not for goods and merchandise as such." After referring to numerous cases, he concludes: "The cases cited, show that the distinction contended for by the defendant's counsel cannot be maintained. I am not aware of a single case reported which sustains it, nor of any elementary writer who gives countenance to it."

In the case above cited it is said: "His liability extends to wearing apparel, jewelry, money and even to the horses, wheat, butter and other articles of bulk belonging to the guest, if received by the inn-keeper into his care and within his place of entertainment. This is the rule of the common law, enforced in the days of Lord Coke, and long before and ever since, as well in England as in this State."²

1, *Wilkins vs. Earl*, 44 N. Y., 174-179;

2, See also *Kellogg vs. Sweeney*, 1 Lansing, 397;

NOTE.—The following cases hold that he is not limited in liability to what is reasonably necessary for traveling: *Berkshire Woolen Co. vs. Proctor*, 7 Cush., 417; *Pinkerton vs. Woodward*, 33 Cal., 357; *Sneider vs. Geiss*, 1 Yeates, 34. A contrary doctrine is maintained in the following: *Sasseen vs. Clark*, 37 Ga., 242; *Simon vs. Miller*, 7 La. An., 360; *Treike vs. Burrows*, 27 Md., 130; *Myers vs. Cothill*, 5 Bis., 465.

It would therefore seem to be the well settled rule in this State that an inn-keeper's liability for baggage is even greater, his trust even more sacred, his duty to use even more diligence than a common carrier of goods for hire.

NECESSITY OF GOODS BEING IN THE HOSPITUM.

It is held not necessary that goods of the guest should be placed in the special keeping of the inn-keeper in order to render him liable. If the guest's goods are within the inn, that is enough to charge the inn-keeper.¹ It is difficult to state when goods are within the inn so as to be in custody of the inn-keeper.² "The limits of the *hospitum*, or inn, have not been defined with precision, and must depend somewhat upon the particular circumstances of each case. It is not necessary that goods should be within the walls of the house in order to be 'within the inn.'"³ If a guest in the absence of the landlord and his servants, hang up his coat in the place allotted for that purpose, it is *infra hospitum*.⁴ In Schouler on Bailments, (p. 269,) he observes: "It appears to be the bringing his personal property as a guest into the host's lawful control, that sets the liability of inn-keeper in operation, rather than an actual delivery

- 1, Bennett vs. Mellor, 5 T. R., 273; 2 Kent's Com., 593; McDonald vs. Edgerton, 5 Barb., 560; Packard vs. Northcroft, 2 Met., 439; Burrows vs. Trieber, 21 Md., 320;
- 2, See Sanders vs. Spencer, 3 Dyer, 226, b; Farnsworth vs. Packwood, 1 Stark., 249; Burgess vs. Clements, 4 Man. & Sel., 366; Richmond vs. Smith, 8 Barn. & Cres., 9;
- 3, Parker, J., in Albion vs. Presby, 8 N. H., 408; 2 Am. Dec., 680;
- 4, Norcross vs. Norcross, 53 Me., 164;

into his personal custody, or even getting the things into the local confines of the inn."

WHEN LIABILITY COMMENCES.

The inn-keeper becomes liable whenever a person goes to his inn with the *bona fide* intention of remaining there as a guest, and he is received as such. "If one goes to an inn as a wayfarer and traveler, and the inn-keeper receives him as such, the relation of landlord and guest with all its rights and liabilities is instantly established."¹ The responsibility of the inn-keeper begins from the moment he receives the guest with his goods.² If a person stops at an inn as a traveler, and he is received as such, the relation of inn-keeper and guest is immediately established, with all its privileges and liabilities; and, once established, such relation continues as long as he sojourns as a traveler, which is presumed till the contrary appears. It is held that the relation is not necessarily changed by an agreement as to price, or any definite length of sojourn.³

WHEN LIABILITY ENDS.

The inn-keeper's liability as such ceases when the guest pays his bill and quits the house with the declared intention of not returning. If the departing guest should then leave any of his possessions behind him the inn-keeper will not be liable for their safe keeping unless he has taken them into his special charge, and he is only then a bailee, and liable as

- 1, *Jalie vs. Cardinal*, 35 Wis., 118;
- 2, *Edwards on Bailments*, p. 407;
- 3, *Ross vs. Mellin*, (Minnesota,) 32 Northwestern Reporter, p. 172;

such.¹ It was held in Vermont that it would not alter this rule, if upon leaving, the guest should make an arrangement for the keeping of his horse.² In a recent case decided in the Supreme Court of Colorado it was held that where a guest on leaving a hotel without the intention of returning as a guest, but without paying his bill, leaves his valise in charge of the hotel clerk, and returns within forty-eight hours, the liability of the inn-keeper is that of a bailee for want of ordinary care and that the loss of the valise raises a presumption of negligence against him.³

The liability of an inn-keeper as such for baggage left with him, with his consent, continues for a reasonable time, it has been held, after the settlement of the bill. After a reasonable time he is considered a bailee and is responsible for gross negligence as any other depository.⁴ Where on the guest's leaving the inn, the porter took charge of his baggage, promising to deliver it at the cars, and some of it was lost by the porter, it was held that the inn-keeper's liability continued until the baggage was actually delivered at the depot, and that he was liable for the loss.⁵ In this State it has been held that a hotel clerk has no power in absence of special authority to bind the inn-keeper to safely keep a guest's baggage after he leaves the inn.⁶ The responsibility of the inn-keeper ends when the relation between him and the guest is dissolved.⁷

- 1, *Wintermute vs. Clarke*, 5 Sandf., 262; *Lawrence vs. How*, 1 Utah Ter. Rep., 142;
- 2, *McDaniels vs. Robinson*, 28 Vt., 387;
- 3, *Murray vs. Marshall*, 13 Pacific Rep., 589;
- 4, *Adams vs. Clem*, 41 Georgia, 65;
- 5, *Sasseen vs. Clark*, 37 Ga., 242;
- 6, *Corkindale vs. Eaton*, 40 How., 266;
- 7, *Edwards on Bailments*, p. 407;

In *Wharton on Negligence*, Sec. 687, he says: "It is an interesting question how long, when a guest leaves his baggage with an inn-keeper, the inn-keeper is liable, as inn-keeper, for such. Judging from the analogy obtained as to common carriers, we would conclude that the exceptional and onerous insurance liability of the inn-keeper would not continue after the guest has permanently left the inn, allowing, of course, for a few hours which may be necessary for parties to effect a removal." Where a boarder is ordered to leave a hotel for non-payment of his bill, and thereupon leaves without removing his baggage, it is held that the proprietors thereof are responsible as bailees of such baggage without reward, and are responsible only for gross negligence.¹ A guest at an inn paid his bill and had his name stricken from the register, in the morning, purposely to relieve himself of his liability as a guest during a short absence, intending to return at night. He left his valise in his room with a friend and it was stolen during his absence. The court held that the inn-keeper was not liable as he is only chargeable as such from the profit derived from entertaining guests, and where the right to charge, the criterion of liability, ceases, the guest's claim on the inn-keeper expires, subject only to the right to hold him responsible for the reasonable time for a removal of the goods, which is to be determined by circumstances.²

THE INN NOT A BAGGAGE DEPOT.

The traveler cannot send his baggage to an inn, without being himself a guest there, and hold the

1, *Lawrence vs. Howard*, 1 Utah Rep., 142;

2, *Miller vs. Peeples*, 60 Miss., 319;

landlord to his common law liability. This is the doctrine promulgated by our own courts and it seems to have been the law in England. "He is also under an obligation to receive whatever goods his guests bring with them, but he is not bound to receive the goods of one who proposes to deposit them with him, and to go elsewhere, for as he reaps no profit from the deposit of goods, he is not bound to take them under his charge."¹ It is not the business of the hosteller to receive deposits of goods from persons who are not guests of the inn.² The inn-keeper, with whom baggage of his guest has been left with his consent, after departing from the inn, is held liable as inn-keeper without additional compensation for a reasonable time, according to the circumstances of the case.³

It seems to be apparent from the nature of the duties and obligations of the keeper of a common or public inn, that he is not, in his capacity of inn-keeper, bound to receive or furnish accommodations for persons desirous of exposing their commodities for sale, or bound to permit his establishment to be made a depot for the propagation of horses. He is doubtless bound to receive and entertain a strolling peddler, and securely guard his pack of trinkets if brought *infra hospitum*, so long as he remains a mere guest. So, also, would he be bound to receive and entertain a wayfarer, encumbered with a stallion, but under no obligations as an inn-keeper to allow his curtilage to be turned into an asylum for the breeding of horses.⁴

1, Wilcock on Inns, 47;

2, York vs. Grindstone, 6 Salk., 388; Lane vs. Cotton, Com., 104; 1 Salk., 17, 18;

3, Adams vs. Clem, *supra*;

4, Mowers vs. Fethers, 61 N. Y., 38;

Judge Drummond, of the United States Circuit Court, recently laid down the following rule concerning the goods of a commercial traveler: "I think this is the true rule on the subject. If a person going into a hotel as guest, takes to his room, not ordinary baggage, nor those articles which generally accompany the traveler, but valuable merchandise, such as watches and jewelry, and keeps them for show and sale, and from time to time invites parties into his room to inspect and to purchase, unless there is some special circumstance in the case showing that the inn-keeper assumes the responsibility as of ordinary baggage, as to such merchandise, the special obligations imposed by the common law do not exist, and the guest as to those goods becomes the vendor and uses his room for the sale of merchandise, and really changes the ordinary relations between inn-keeper and guest."¹

LIABILITY FOR LAUNDRY BILLS.

The hotel keeper is not obliged to pay the washing bills of his guests which have been incurred at outside laundries, unless he have been in the habit of paying their laundry bills; in that case an undertaking on his part might be inferred and considered evidence of an antecedent promise.²

LIABILITY FOR LOST BAGGAGE.

In considering the liability of an inn-keeper for the baggage of his guests we may observe that this responsibility is founded upon a very ancient custom and was recognized by the civil law. The Roman

1, Myers vs. Cottrill, 5 Bissell, 465;

2, Cullard vs. White, 1 Starkie, 171;

law gave an action against the inn-keeper if the goods of a traveler were lost or damaged in any way except by inevitable accident, and even then it is intimated by Ulpian that inn-keepers were not altogether restrained from knavish proclivities or suspicious neglect.¹ The common law liability of an inn-keeper for the goods of his guests damaged or stolen while under his care is almost as ancient as the system of jurisprudence itself.² The law regulating the liability of inn-keepers is founded on the great principle of public utility to which all private considerations ought to yield; for travelers who must be numerous in a rich and commercial country, are obliged to rely almost implicitly on the good faith of inn-keepers, whose education and morals are often none of the best, and who might have frequent opportunities for associating with ruffians and pilferers, while the injured guest could seldom or never obtain legal proof of such combinations, or even of their negligence, if no actual fraud had been committed by them.³

In order to render an inn-keeper liable it is not necessary that the goods be placed in his special keeping, or brought to his special notice. If they be in the inn, brought there in an ordinary way, by a guest, it is sufficient to charge the proprietor.⁴ The inn-keeper is not freed from liability by proving that neither himself nor his servants are to blame, or in fault; he is liable in any event unless he can show

1, Wharton on Innk., p. 88;

2, Year Book, 10 Henry VII, 26;

3, Jones on Bailments, 95, 96;

4, Cayle's Case; Packard vs. Northcroft, 2 Met., 439; Norcross vs. Norcross, 53 Me., 113; Burrows vs. Trieber, 21 Md., 320; McDonald vs. Edgerton, 5 Barb., 560; Coykendall vs. Eaton, 55 Barb., 188;

that the loss or injury occurred through the act of God, or of public enemies, or was the fault of the guest.¹ The landlord is equally liable whether baggage is put into a room, a horse handed over to the hostler, or goods placed in an outhouse belonging to the establishment and used for that sort of articles.² Where a guest's baggage was left by the landlord's servant in the hall, and the servant afterward wanted to carry it into the commercial room, but was prevented by the guest, who wanted it left in the hall, and it was subsequently lost, the inn-keeper was held liable.³

Where the inn-keeper sends his porter to the cars to receive the baggage of intending guests, he is liable for the same until it is actually re-delivered into the custody of the guests.⁴ It has been long settled law that a landlord cannot make his guests take care of their own goods.⁵

In one case a guest had actual notice that the inn-keeper would not be responsible for valuables unless put under his care, and on preparing to depart, he gave a trunk containing precious goods into the care of a servant of the inn-keeper's. It was held the inn-keeper was liable for its loss.⁶ Inn-keepers as well as common carriers are regarded as insurers of the property committed to them. The law rests on the same principles of policy here as in England and other countries.⁷ The liability of the inn-keeper extends to

- 1, *Morgan vs. Ravy*, 6 Hurl. & N., 265;
- 2, *Clute vs. Wiggins*, 14 Johns., 175;
- 3, *Candy vs. Spencer*, 3 Fast. & F., 306;
- 4, *Rogers' Law of Hotel Life*, p. 62;
- 5, *Bennett vs. Mellor*, 5 Term Rep., 273;
- 6, *Stanton vs. Leland*, 4 E. D. S., 88;
- 7, *Mason vs. Thompson*, 9 Pick., 280;

all personal property the guest has with him, no matter as to its value or kind.¹ The English rule is the same with us unless abrogated by statute.²

A guest, after spending a few days at a hotel, gave up his room, left his valise, taking a check for it. He was gone eight days, without paying his bill; he then registered his name, taking a new room, and called for his valise. It was missing and the duplicate check was found attached to another bag which did not belong to the guest. It was held that the inn-keeper was liable for the loss, and that the changing of the check was evidence of negligence.³

A guest paid his bill and ordered his trunk sent to the boat, at the same time leaving a porter's fee. The inn-keeper was held liable for the safety of the baggage until it was actually put on board the boat.⁴ It has been held that the inn-keeper may refuse to be responsible for the safe-keeping of a guest's goods unless they are deposited in a certain place, and if the guest refuse or object to this, it exonerates the host in case of loss.⁵

It has been held that simply ordering goods to be placed in a particular room is not taking property under one's own care so as to relieve the inn-keeper from liability in case of loss.⁶ An inn-keeper is responsible for a load of goods in a wagon, belonging to a guest, if the wagon be left over night in an open,

1, Kellogg vs. Sweeney, 1 Lansing, 397;

2, Shaw vs. Berry, 31 Me., 478;

3, Murray vs. Clark, 2 Daly, 102;

4, Giles vs. Fauntleroy, 13 Md., 126;

5, Saunders vs. Spencer, Dyer, 266, a; Wilson vs. Halpin, 30 How. Pr., 124; Fuller vs. Coots, 18 Ohio St., 343;

6, Packard vs. Northcroft, 2 Metcalf, (Ky.), 439;

uninclosed space near the highway, such place having been designated by the inn keeper's servant as the place for leaving the wagon. The place where the goods are deposited is not the test; it is whether they are in the custody of the inn-keeper, or at the risk of the guest.¹ If a guest, having a drove of sheep, have them put into pasture under his direction, and they are injured by eating poisonous plants, the inn-keeper is not liable unless chargeable with negligence or want of care.²

PROPERTY LOST IN BATH HOUSE

In a case lately decided in Maine it was held that an inn-keeper who keeps a sea-bathing house, separate from the inn, is not liable for the goods and clothes of his guests left there while the guests are bathing and stolen therefrom.³ The action was brought to recover of defendant, an inn-keeper, proprietor of the Old Orchard House, at Old Orchard Beach, on the Maine coast, for money, watch, chain and ring of plaintiff, stolen from the bath house kept by defendant at the sea-shore, where persons bathing in the sea, change their garments, and leave their clothes, the plaintiff being at the time of the loss a guest in defendant's hotel. The court said that the question was whether one who keeps an inn, and also keeps a bath house separate from his inn, is chargeable as inn-keeper for property stolen from the bath house. The judge said: "We think he is not. It seems to us that the keeping of an inn and the keeping of the bath house are separate and distinct em-

1, Piper vs. Manny, 21 Wendell, 282;

2, Hawley vs. Smith, 25 Wendell, 642;

3, Miner vs. Staples, 71 Maine, 316;

ployments and involve separate and distinct duties and liabilities. One may be an inn-keeper without being a bath house keeper, or he may be a bath house keeper without being an inn-keeper; or the same person may engage in both employments just as a livery stable keeper may also be a common carrier of passengers, but we do not think his doing so will make him responsible in the one capacity for liabilities incurred in the other. We are not now speaking of bath rooms attached to or kept within hotels, but of separate buildings, erected upon the sea-shore, and used, not as bath rooms, but as places in which those who bathe in the sea change their garments, and leave their clothes, and other valuables, while so bathing. It seems to us that such an establishment is as distinct from an inn as a wharf or boat house would be, and that an inn-keeper, as such, can no more be made responsible for property stolen from such a bath house than he could be for property stolen from a wharf, or a boat house, if he happened to be the keeper of the latter as well as the former."

BAGGAGE LOST IN OMNIBUS.

Where the keeper of an inn gave notice that he would furnish a free conveyance to and from the cars to all passengers with their baggage, and for that purpose employed the owner of certain carriages to take passengers and their baggage free of charge to his hotel, and a traveler, knowing this arrangement, drove in one of these cabs to the hotel and on the way there had his trunk lost or stolen through the want of skill or carefulness on the part of the driver of the cab, it was held the inn-keeper was liable for the value of the trunk. The court held that it was entirely immaterial

whether the inn-keeper was responsible as such or as a common carrier, as in either case the consideration for the undertaking was the profit to be derived from the entertainment of the traveler as a guest, and that an implied promise to take care of the baggage of the traveler was founded upon such consideration.¹

TWO GUESTS IN A ROOM.

A guest left his door unlocked because the inn-keeper told him he must do so or get up during the night and let others into the room who were to share its occupancy, and it was held in case of loss of his property that the inn-keeper was responsible.² A hotel keeper is responsible for the conduct of another guest, placed in a room already occupied, without the consent of the occupant.³

ACTS OF HOTEL CLERKS AND SERVANTS.

The Supreme Court of Ohio has recently held that the clerk of an inn-keeper has no authority to bind the proprietor, either as inn-keeper or special bailee, for the loss of money deposited for safe keeping with such clerk by a person who is not a guest of the inn at the time of making such deposit.⁴ Judge Owen said: "It is not within the course of the employment of a mere clerk of such inn-keeper to receive in deposit the goods of any except guests of the inn, and if he does so, it is a transaction between him and the owner, and no liability for the loss of such goods attaches to the inn-keeper." For any acts of the

1, *Dickinson vs. Winchester*, 4 Cush., 114; 50 Am. Dec., 760;

2, *Milford vs. Wesley*, 1 Wilson, (Ind.), 119;

3, *Dessam vs. Baker*, 1 Wilson, 429;

4, *Arcade Hotel Co. vs. Wiatt*, 2 Western Rep., 376;

clerk or servants within the proper scope of his employment the inn-keeper will be liable upon the general principles of agency.

The general rule that the declarations of an agent will bind the principal must be taken with some limitation. It must appear that all declarations or admissions were made in the course of the business for which the servant is employed and is acting for the principal. Thus, where the bar-keeper of defendant, a hotel proprietor, said in conversation that the plaintiff had "made his pile," and exhibited a bag of gold dust which plaintiff had deposited for safe keeping at the inn, and said it contained about six thousand dollars, it was held that such declarations were not part of the *res gesta*, and that there was no act done by him in his character of agent, or in discharge of his duties as an agent, and that his declarations accompanying the transaction were mere hearsay.¹ If a guest be assaulted by a servant of an inn, the hotel keeper is liable, although he himself was not present at the time or consenting thereto.² If the inn-keeper be absent it makes no difference as to his responsibility. He is liable for the acts of those he left in charge.³

LANDLORD'S DILIGENCE IMMATERIAL.

It will not do for the landlord to excuse his liability for loss of his guest's property by showing that he himself is free from laches and that no negligence can be imputed to him. Even if he has been diligent in his efforts to save the property of his

1, *Mateers vs. Brown*, 1 California, 221;

2, *Wayde vs. Thayer*, 40 California, 578;

3, *Rockwell vs. Proctor*, 39 Georgia, 105;

guest, it does not avail him.¹ If a loss occur, the guest can rarely obtain any evidence as to how it was caused. The servants are all interested for the inn-keeper, and will endeavor to preserve him from liability if possible. They occupy a hostile position to the guest. It has been well said that the liability of the landlord protects the guest and his property when asleep or temporarily absent.² Edwards lays down the general proposition that the inn-keeper is answerable in the first instance, though no neglect be proved.³

ACCIDENTS IN HOTELS.

We will now proceed to notice some of the leading cases that involve the liability of the landlord for accidents, those unforeseen, unavoidable events, which happen frequently in hotels of every class and description, as well as in the best regulated families. In an English case it appeared that the defendant, a hotel keeper, invited plaintiff as a visitor; that in the hotel was a glass door which it was necessary for the plaintiff to open in making an exit from the hotel; that the door being in an insecure and unsafe condition, a large piece of glass fell out and wounded the plaintiff, yet, it was held that no cause of action existed against the inn-keeper. Pollock, J., said he considered a visitor in the house was in the same position as any other member of the inn-keeper's family as regards the negligence of the master or his servants, and he must take his chance of accidents with the rest. Another member of the court observed that where a person is in the house of another, either on business or for any

1, *Morgan vs. Ravy*, 6 Hurl. & N., 265;

2, *Wilkins vs. Earl*, 44 N. Y., 174;

3, *Edwards on Bailments*, p. 407;

other lawful purpose, he has a right to expect that the owner will take reasonable care to protect him from injury, and will not leave trap doors open, down which he might fall, or take him into a garden among spring guns and man-traps.¹ It has been held that if a guest is injured in the elevator of a hotel where he is stopping by his own negligence and his want of ordinary care and prudence, he cannot hold the inn-keeper liable for the damages he may sustain.² In a case in this State it appeared that the plaintiff had been attending a ball at the hotel. The ball was in a hall in the third story of the inn, and plaintiff in coming away, instead of descending two flights of stairs, went out of a door left unlocked at the foot of the upper flight and opening out on the roof of a piazza. The plaintiff stepped on the unguarded end of this roof and fell to the ground, receiving severe injuries. A verdict against the inn-keeper was sustained on the ground that by letting the hall for public purposes he held it out as safe, and was bound to render approach and egress safe.³

It is held by a recent case to be the duty of a hotel keeper to take reasonable care of the persons of his guests, so that they are not injured by a want of such care on his part, while they are at the inn as his guests; and where a statement of claim for damages alleged that while the plaintiff was using the hotel, of which defendant was proprietor, as a guest for reward to the defendant, by the negligence of defendant the ceiling of plaintiff's room fell upon and injured him, it was held that this statement showed a sufficient

1, *Southcote vs. Stanley*, 1 Hurl. & N., 247;

2, *Rathborn vs. Payne*, 22 Wendell, 399;

3, *Camp vs. Wood*, 76 N. Y., 92;

cause of action.¹ In *Whittaker's Smith on Negligence*, at page fifty, it laid down that "the owner of premises is liable for the ordinary negligence to the persons whom he has allowed to come there for their own advantage," and "so, also, the liability of host to guest, or visitor at his house stands upon the same ground. The relationship here is not that of inviter and invited, where the inviter is liable as we shall see for slight negligence, but the guest takes the premises as he finds them, subject only to the duty of the host to warn against any trap."

LIABILITY LIMITED BY STATUTE.

The New York Legislature have seen fit to limit the amount for which an inn-keeper will be responsible to his guest. By Section 2, of Chapter 421, of the Laws of 1855, as amended by Section 2, of Chapter 227, of the Laws of 1883, it is provided that "No hotel keeper shall be liable to any guest for the loss of wearing apparel, goods or merchandise for any sum exceeding the sum of \$500, where it shall appear that such loss occurred without the fault or negligence of such hotel keeper; nor shall he be liable in any sum for the loss of any article or articles of wearing apparel, cane, umbrella, satchel, valise, box, bag, bundle or other chattle belonging to such guest, and not within a room assigned to him, unless the same shall be specially entrusted to the care and custody of such hotel keeper or his servants."

This statute makes a sweeping change in the common law rule. It will be observed that this exception from his former liability, includes those cases

1, *Sandys vs. Florence*, 47 L. J. C. P., 598;

where a guest takes his property in his own charge, does not leave it in his room, or entrust it to the care of the host or his servants. He can still hold the landlord liable by putting his baggage in his room, or entrusting it to the inn-keeper or his servants. If he does not do so, having had the opportunity, he must bear the loss without complaining.

POSTING NOTICES, ETC.

As originally enacted in 1867 the statute required copies of the act to be posted by restaurant, boarding-house and hotel keepers, and in every bedroom of the house. As amended the act only applies to hotels, and requires that notices be only posted in the office and public parlors of the hotel. The guest must also give notice of his departure in order to claim the benefit of the act. The section as amended is given in the next subdivision.

CHARGING EXCESSIVE PRICE TO GUEST.

Section 2, of Chapter 677, of the Laws of 1867 as amended by Section 2, Chapter 802, of the Laws of 1871, as amended by section 3, Chapter 227 of the Laws of 1883, is as follows:

“Every keeper of a hotel or inn shall post in a public and conspicuous place and manner in the office or public room, and in the public parlors of such hotel or inn, a printed copy of this act and a statement of the charges or rate of charges by the day and for meals furnished and for lodging: No charge or sum shall be collected or received by any such hotel keeper or inn-keeper for any service not actually rendered, or for a longer time than the person so charged actually remained at such hotel or inn; nor for a higher

rate of charge for the use of such room or board, lodging or meals than is specified in the rate of charges required to be posted by the last preceding sentence; provided such guest shall have given such hotel keeper or inn-keeper notice at the office of his departure. For any violation of this section, or any provisions herein contained, the offender shall forfeit to the injured party three times the amount so charged, and shall not be entitled to receive any money for meals. services or time charged."

CHAPTER V.

MONEY AND VALUABLES.

The inn-keeper's liability for money and valuables will form the subject of this chapter. We have already seen that the liability extends to jewelry and money of the guest, and that the amount of money was not limited to his traveling expenses, as in case of a carrier of goods for hire.¹ The common law liability of an inn-keeper is still in force except as it is modified by statute or special contract.² In this State, as in many others, this liability has been modified, and statutes enacted, allowing the inn-keeper to provide a safe in which the money, jewelry and valuable property of his guests may be deposited, and exempting him from all liability for their loss, if the guests see fit to retain such valuables under their control, after receiving notice that a safe has been provided. The old rule is still in force as to inn-keepers who do not provide a safe. The inn-keeper who has no safe can claim no protection under the statute, and must still look after the money and valuables of his guest with the greatest diligence, and his common law liability is in all cases the same, except where it is restricted by statutory provisions. The common law of England is in force in every State except Louisiana, which is regulated by the civil law.

1, See, Chapter III., *What is Baggage*, p. 99 ;

2, *Ramaley vs. Leland*, 43 N. Y., 539;

THE NEW YORK STATUTE FOR PROVIDING SAFES.

The following is the provision of the Laws of 1855, (Chapter 421,) as amended by Section 1, Chapter 227, of the Laws of 1883 :

“Whenever the proprietor or proprietors of any hotel or inn shall provide a safe in the office of such hotel, or other convenient place, for the safe keeping of any money, jewels or ornaments belonging to the guests of such hotel or inn, and shall notify the guests thereof by posting a notice (stating the fact that such safe is provided, in which such money, jewels or ornaments may be deposited) in a public and conspicuous place and manner in the office and public room, and in the public parlors of such hotel; and, if such guest shall neglect to deliver such money, jewels or ornaments to the person apparently in charge of such office for deposit in such safe, the proprietor or proprietors of such hotel shall not be liable for any loss of such money, jewels or ornaments sustained by such guest by theft or otherwise.”

The statute originally required this act to be posted in all bed-rooms of the inn, but by the amendment of 1883, it is only necessary to post in the office and public room and in the public parlors. The guest may also now deliver his valuables, etc., to the person who is *apparently* in charge of the office to have them put in the safe.

The Act of 1855 read, “The proprietor or proprietors of any *hotel*,” not including the term *inn*; and although, as we have seen, these words are now used synonymously, yet Mr. Edwards, in his work on Bailments, (p. 401-2,) says, that this statute is applicable only to *hotels*, and further declares that “The

hotel is only an elegant kind of common inn, and it is necessary, as we have seen, to declare against the keeper of it as an inn-keeper. It is in no legal sense either more or less than an inn whatever be the name by which it is called, and hence the difficulty of construing a statute like this, in which a name of pretense is used to designate a favored class." The amendment of 1883, removed the objections urged by the commentator, by applying the Act to *both* hotels and inns.

NOTICE TO GUEST THAT SAFE IS PROVIDED.

It has been held in this State that if the guest had personal notice that a safe was provided, it had the same effect as posting a notice.¹ In this case the inn-keeper told his guest when he came to the inn that he had a safe for valuables, and would not be responsible for his unless he placed them therein. The guest did not deposit them, but left \$2,000, in gold, in a trunk in his bed-room, which he locked and gave the key to the inn-keeper. The money was stolen out of the trunk, and the court exonerated the landlord from liability for its loss. If the guest have clear and actual notice of a regulation as to the deposit of valuables, and do not comply with it, he assumes the risk of loss happening from any cause except the negligence or fault of the inn-keeper and his servants.² But the landlord should give clear and unmistakable notice of his regulations, before he can exonerate himself from liability in case of loss.³ In absence of a statute, directing the manner of notifying guests as

1, Purvis vs. Coleman, 21 N. Y., 111;

2, Stanton vs. Leland, 4 E. D. Smith, 88; Kellogg vs. Sweetney, 1 Lansing, 397;

3, VanWyck vs. Howard, 12 How., Pr., 147;

to the fact that a safe had been provided, it seems that a printed notification is not sufficient. The notification must be clear, and brought home to the mind of the guest, or at least to his knowledge in such cases, before he enters and takes possession of his room.¹ Where the register was headed with a notice, "Money and valuables, it is agreed, shall be placed in the safe in the office; otherwise the proprietor will not be liable for loss," and a guest entered his name on the page below such heading, it was held he was not bound by the notice as there was no proof that such notice was seen by him, or that he assented to its conditions.²

It has been held that a notice that the proprietor would not be responsible for loss unless valuables were deposited in a safe, did not apply to those articles of jewelry which a person usually carries with him, his watch for instance, because such article would be of little service to the owner if stowed away in a hotel safe. But if the watch were a richly jeweled one, set in valuable diamonds, it would be wiser, the court thought, to give it to the proprietor to keep.³ In another case it was held that though a watch, a gold pen, and pencil-case, might in some sense be called jewels, yet they must be considered part of a traveler's personal clothing or apparel, and one after retiring for the night is not expected to send down his ordinary clothing or apparel to be put in the safe.⁴

1, Morgan vs. Ravey, 30 L. J. Exch., 131; 6 Hurl. & N., 265;

2, Bernstein vs. Sweeney, 33 N. Y., 271; See also, Kent vs. Midland Rw., L. R. 10 Q. B., 1; Henderson vs. Stevenson, L. R. 2 S. & D., 470; Ramaley vs. Leland, 6 Roberts, 558; s. c. 43 N. Y., 539;

3, Morgan vs. Ravey, 6 Hurl. & N., 265;

4, Giles vs. Libby, 36 Barb., 70; but see *ante*.

The extent to which a landlord can escape his liability depends upon the law of the State or country in which he resides. If there is no special statute with which he can comply, no notice will bind the guest unless it can be shown that he saw it before taking his room, or has assented to it.¹

NEGLECT TO MAKE DEPOSIT.

In order for an inn keeper to receive the protection of the statute, the guest must have had an opportunity to make a deposit of his money or valuables, and have neglected so to do. Peckham, J., says that the Act of 1855 was aimed at losses that should occur by such neglect. "It could have no reference," he says, "to losses at the inn, occurring before the guest had the opportunity to make such deposit, or after he had packed his trunk, locked his room, and given notice for immediate departure, etc., delivered up the key of his room to the clerk to have his trunk brought down."²

The case just referred to has been regarded as a leading authority upon the subject, and therefore we call special attention to the same. The plaintiff, a guest at French's Hotel in New York City, offered to the book-keeper a large package, wrapped in oil cloth, containing jewelry, without disclosing its contents, and requested that it be deposited in the safe of the hotel. The book-keeper replied that it was unnecessary, made no inquiry as to the contents of the package, and directed the plaintiff to take the package to his room, saying that it would be just as safe there.

1, Morgan vs. Ravey, 30, L. J. Ex., 131; Bernstein vs. Sweetney, 33 N. Y., 271;

2, Bendetson vs. French, 46 N. Y., 266;

When the plaintiff was ready to leave he packed his trunk, in which the package then was, delivered up the key of his room to the clerk, having locked the door, stated to the book-keeper he was going to leave on the first train, and ordered his trunk brought down immediately. The plaintiff went to an eating-saloon in the basement and returned in a few moments and learned that his trunk had not been brought down. It was found that the room had been entered, the trunk broken open and the package stolen. The defendant kept a safe which plaintiff knew of. The value of the stolen articles was \$1,856, for which plaintiff recovered judgment. On appeal it was held that defendant could not be held responsible for a refusal to receive; but that there was a "neglect to deposit" within the meaning of the inn-keeper's Act of 1855.¹

In the opinion of Peckham, J., he says: "The package contained the jewels and ornaments sued for; but the plaintiff did not state its contents, nor did the book-keeper inquire what it contained. I think this was a 'neglect to deposit,' within the meaning of the statute. The book-keeper did not know that money, jewelry or ornaments had been offered him. Hence, he did not refuse to receive them. Suppose this package had been of the size of an ordinary trunk; would the clerk have been compelled to receive it? Clearly not; because, first, there was nothing to notify him that it contained money, etc.; second, so large a package was not within the meaning of the statute; no safe would probably have apartments to receive it. There was nothing about this package to indicate that

1. Bendetson vs. French, 46 N. Y., 266;

it was not appropriately sent to the room of the guest. The defendant should not be held to the responsibility of refusing to receive money, jewels, etc., unless he did it knowingly. * * The burden rests with the guest to make this deposit. He neither made nor offered to make it, within the meaning of the statute. Simply offering a package of this size, without disclosing its contents, is not offering to deposit money, jewels or ornaments."

This case was afterwards distinguished by Earl, J., who put it on the ground that the guest had surrendered up his room and placed it in the control of the landlord; he had asked to have his trunk brought down immediately, and but for the neglect of the hotel clerk to attend to this order at once, the theft could not have been committed.¹ In this latter case of *Rosenplanter vs. Roselle*, the plaintiff, who was *en route* to a watering place, stopped at a hotel, arriving just in time for a late dinner. While she was at the table her trunk was broken into in her room and jewelry stolen. An iron was found by detectives in one of the servant's rooms which corresponded with marks on the trunk. The defendant claimed exemption under the statute, having furnished a safe and posted the required notice, and it was contended that the plaintiff had neglected to deposit after an opportunity so to do. The court said: "There must be a brief period after the arrival of a guest at a hotel before he can make the deposit, and during this brief period the statute affords the hotel keeper no protection. But in every case where the guest has an opportunity to make the deposit and does not make

1, See *Rosenplanter vs. Roselle*, 54 N. Y., 264;

it, he neglects to make it within the meaning of the statute. To neglect means to omit, as to neglect business, or payment, or duty, or work, and is generally used in this sense. It does not generally imply carelessness, or imprudence, but simply an omission to do or perform some duty or act. It is manifestly in this sense that it is used in this statute. To hold that the guest must be guilty of some actual negligence in not making the deposit would be substantially to nullify this statute.—The true rule undoubtedly is as above stated, that it is the duty of the guest to make the deposit whenever he has time and opportunity to do so. This rule may be inconvenient to guests, but the statute was not intended for their benefit. It was for the protection of the hotel keepers." Accordingly the defendant was held to be fully exonerated from all liability.

CONSTRUCTION OF THE STATUTE.

This statute has been construed by Earl, J., to apply to all money and jewels which a guest had with him on his journey.¹ He said: "The law is settled in this State that if a guest, on retiring to bed at night, removes a watch or jewelry from his person, or leaves money in his pockets and neglects to deposit the same in the safe provided for that purpose, he cannot hold the landlord liable for the loss of the same. Courts in construing a statute must seek for the intention of the law-makers, and they must seek for it in the language used. They must consider all parts of the statute, and so far as possible give force and effect to all the language used, and so far as the language will

1, *Rosenplanter vs. Roselle*, 54 N. Y., 264;

permit, they should give such a construction as will make the statute just and reasonably convenient. But if, after the language has been attentively considered with the aid of such circumstances as the canons of construction, sanctioned by the law, allow to be consulted, the statute is found to be somewhat impracticable, inconvenient, harsh or unjust, the courts have no alternative but to enforce and uphold it as they find it, and leave it to the legislature to remedy the mischief by amendment or repeal."¹

THE NEW JERSEY STATUTE CONSTRUED.

The New Jersey statute, as to an inn-keeper providing a safe to relieve himself from his common law responsibility, is identical with the New York statute, and its legal construction by the Court of Appeals in this State is very important. In the case of *Hyatt vs. Taylor*, (42 N. Y., 258;) this statute was judicially construed. It appeared that the action was brought to recover for the loss of money, coupons, two gold studs, and two gold pins, alleged to have been stolen from plaintiff's room, while a guest at the inn of defendants at Jersey City, New Jersey. The defense proved on the trial that a safe had been provided in the house for the deposit of money and valuables, notice whereof was duly given by putting up printed copies in the rooms of guests, and defendants rested on an act of the New Jersey legislature, providing that if the hotel keeper should furnish a safe for the safe keeping of any money, jewels or ornaments of his guests, or boarders, and should post notices to that effect in their rooms, then if the guest or boarder

1, *Rosenplanter vs. Roselle, supra;*

neglected to deposit such money, jewels or ornaments in such safe, the hotel proprietor should not be liable for loss sustained by theft or otherwise. The plaintiff recovered before a jury, and the General Term ordered a new trial; (see 51 Barbour, 632;) the Court of Appeals affirmed the General Term order and ordered judgment absolute for defendant. In the opinion of Woodruff, J., he says: "Neither the rules of the common law touching the responsibility of inn-keepers, nor the principles governing the interpretation of statutes are in any doubt. The legislature is the sole judge of the question of discretion; whether it is wise or reasonable to modify the common law responsibility of inn-keepers by permitting them to take into their actual custody in their place of safe deposit, all money, jewelry and ornaments, for the safety of which the guests desire to hold them liable, rests purely upon the legislative estimate of what public policy and a regard for their protection against the contingency of loss requires. So also the question whether possible temporary inconvenience to guests should outweigh the reasonable right of the inn-keeper to guard property of this description, that he may in that respect, be safe in his business, is purely for the legislature. Who shall say that the convenience as well as the protection of the inn-keeper was not deemed by the legislature as important as the temporary convenience of his guest? Who shall say that the evil which the legislature intended to guard against, was simply the danger that the inn-keeper might be subjected to a loss of more money, or more jewelry, or more ornaments than the convenience of his guest reasonably required? And when it is asked,

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‘Could the legislature have intended that, on entering a hotel, the guest should strip himself of all money, jewels and ornaments or be without protection?’ it may be answered, the guest walks the streets, he visits places of public resort or amusement, or the places to which business calls him, and he enters his own abode, and he takes with him to each, without any especial guaranty of safety, so much money, and so many jewels and ornaments as he sees fit, and the hardship is not great, if his entrance or his stay at a hotel places him in no worse condition. If it be said that in all other places he acts voluntarily, and uses the means he deems proper for his own protection, it may be added that when he enters a hotel, the landlord is still bound by the statute to assume his protection and bear his risks. He is, therefore, not only in no worse condition than while without its doors or within his own home, but better—much better; he may, if he choose, require the landlord to keep this hazardous property for him.”¹

WATCHES AND MONEY OF GUESTS.

The cases do not all seem to be in harmony with the doctrine of these judges, and there is a conflict of authority as to whether the statute applies to the watch of a guest and to *all* his money. In one instance, it was held that the statutory exemption did not apply to all money, jewels and ornaments of the guest, but only to such as the hotel keeper himself, if a prudent person, would, if traveling, have put in a safe, if convenient, when retiring at night. It was said there, to be unreasonable to suppose that the

1, Hyatt vs. Taylor, 42 N. Y., 258, etc.;

legislature intended to require the guest, when he retired at night, to deposit in the safe such reasonable amount of money as he had provided for his expenses, and the jewelry and ornaments which he had with him for ordinary use, and that the exemption did not apply to twenty-five dollars in money, a gold pen and pencil case which were stolen from the room of the guest in the night.¹ This case was unfavorably commented upon in *Hyatt vs. Taylor* and *Rosenplanter vs. Roselle*, just cited, but these latter cases seemed to completely overlook the Court of Appeals decision in *Ramaley vs. Leland* (43 N. Y., 540 ;).

In that case it appeared that the plaintiff, a guest at the Metropolitan Hotel, in New York City, on retiring for the night, locked the door of his room and placed fifty dollars in money, and his watch, chain, seal and key worth \$353, under his pillow, and they were all stolen during the night. He brought action against the inn-keepers, and defendants offered evidence on the trial that a notice that a safe was provided for the safe keeping of money, jewels and ornaments, was posted in the plaintiff's room in the manner required by law, which evidence was excluded, and defendants excepted. The General Term affirmed the ruling of the lower court, and the Court of Appeals decided to reverse the judgment unless plaintiff deducted the \$50 in money from the verdict, at the same time holding the exemption of liability of an inn-keeper under Chapter 42 of the Laws of 1855, is limited to the particular species of property named, and being a statute in derogation of the common law, cannot be extended in its application by doubtful con-

1, *Giles vs. Libby*, 36 Barb., 70;

struction, and accordingly held that the watch of a guest at an inn, worn and used by him in the ordinary manner, is neither a "jewel or ornament" within the meaning of the Act, and that the inn-keeper is liable for the loss in the room of a guest, notwithstanding his compliance with the Act of 1855.¹

In the course of his remarks on this case, Allen, J., said: "Certain property, particularly valuable in itself, taking but small space compared with its value for its safe keeping, easy of concealment and removal, holding out great temptation to the dishonest, and not necessary to the comfort or convenience of the guest while in his room, is made the subject of the statutory exemption. Property of a different description, including all that which is useful or necessary to the comfort and convenience of the guest, that which is usually carried and worn, as a part of the ordinary apparel and outfit, or is ordinarily used, and is convenient for use by travelers as well in as out of their rooms, is left, as before the statute, at the risk of the inn-keeper. A watch is neither a jewel or ornament, as these words are used and understood, either in common parlance or by lexicographers. It is not used or carried as a jewel or ornament, but as a time-piece or chronometer, an article of ordinary wear by most travelers of every class, and of daily and hourly use by all. It is as useful and necessary for the guest in his room as out of it, in the night as in the daytime. It is carried for use and convenience and not for ornament. But it is enough that it is neither a jewel or ornament in any sense in which these words have ever been used."²

1. *Ramaley vs. Leland*, 43 N. Y., 540;

2. *Ramaley vs. Leland*, *supra*;

If a guest deposit his money with the inn-keeper for safe keeping, the inn-keeper is liable for the amount without reference to the question as to whether or not it was all required by the guest for the expenses of his journey.¹ Story opines that the inn-keeper is liable for loss of any money of the guest stolen from his room as well as his goods and chattles.² Chancellor Kent says an inn-keeper is absolutely bound to keep safe the property of his guests within the inn, whether he knows it or not, and his responsibility extends to the servants of his guest, and to all goods, chattles and moneys of the guest.³ Blackstone says that if an inn-keeper by his negligence suffers a robbery of the guest in his inn he impliedly consents to the robbery, and is responsible for the loss.⁴ Lord Tenterden held there was no distinction between money and goods.⁵

DOCTRINE OF THE UNITED STATES COURT.

In *Elcox vs. Hill*, 98 U. S., 218, writ in error to the Circuit Court of the United States, the plaintiffs were manufacturing jewelers, and one of them who was traveling with a stock through the Western cities, stopped at defendant's inn in the city of Chicago, having two bags, each containing large amounts of jewelry, one of which was unlocked and had no key. It was shown that plaintiff first placed his bags in the coat room while waiting for a room to be assigned to him, and when it was assigned he had the bell boy

- 1, Wilkins vs. Earl, 44 N. Y., 172, overruling 18 Abb., 190;
- 2, Story's Commentaries, § 481;
- 3, Kent's Commentaries, § 470;
- 4, Blackstone's Commentaries, 430;
- 5, Kent vs. Shuckhard, 2 B. & Ad., 803;

take the satchels to his room. Before going to dinner he gave the boy the key, directing him to put the satchels in the coat room again, and on coming from dinner received from the boy a coat room check for them. In the morning it was discovered that the larger satchel had disappeared entirely and the smaller had been rifled of its contents, having no lock upon it. The register contained a direction to guests to place money, jewels and valuable property in the safe, and a similar notice was on the door of the guest's room, the proprietor having complied with the Illinois statutes regarding a safe. The court charged on the trial that negligence was a relative term to be determined from the circumstances. That the circumstance of the guest apparently accepting the bell boy's assurance that the bags would be safe in the coat room, was a circumstance to be considered. Continuing his charge the judge said: "Travelers must be presumed to know the relative duties of the different classes of employes about a hotel; that is to say, that they have no right to intrust their baggage to the care of the table waiter, or to the hostler, from the fact that it is not the duty of such employes to look after or care for the baggage, or take the custody of it. Probably, if a guest at a hotel should deposit his money or jewelry with a table waiter, or cook, or bell boy, without direction to do so from the landlord or clerk in charge, or leave his satchel containing money and valuables unprotected in the halls or public passages, or leave his money exposed in his room, and his room unlocked,—no one would hesitate to say that such an act was an act of negligence to such an

extent as to excuse the landlord in case of loss. * *
It is true, as has been urged by counsel, that the inn-keeper is responsible for the acts of his servants; but that does not justify a guest at a hotel in intrusting valuable merchandise to the care of subordinate servants, whose line of duty was not the charge or keeping of such valuables, without the knowledge of the landlord or his clerk in charge." Upon appeal the judgment was affirmed, the court holding that the question of negligence had been properly submitted to the jury, and that it was not competent for plaintiffs to show admissions of the bell boy that he himself had stolen the jewelry in question, and on no principle could he admit the rights of another person away, though such admissions would be competent if he were on trial himself for the offense.¹

SUFFICIENCY OF DEPOSIT, ETC.

As to what is a sufficient deposit of one's valuables. The New York statute, as it formerly stood, required the guest to deposit in the safe. As it has been amended the guest may deliver such articles to the person apparently in charge of the office. And in speaking of the liability of the inn-keeper for the acts of a servant who made a deposit for a guest in the hotel safe, it was remarked in a leading case: "If the servant was not authorized it may well be asked, why was he permitted to be within the office, and to open the iron safe, and deposit a package therein? It was either culpable negligence of the defendants, in per-

1, NOTE.—In this case the court cited favorably the cases of *Hyatt vs. Taylor*, 42 N. Y., 258; *Stewart vs. Parsons*, 24 Wis., 241; *Purvis vs. Coleman*, 21 N. Y., 211; *Cook vs. Champlain Transportation Company*, 1 Denio, 91.

mitting the servant to occupy an apparently responsible position in the office, obtain the key and open the safe, or being voluntarily entrusted with it, was such an act as warranted the belief that he was authorized by them. Either alternative was quite sufficient to make them chargeable with having conferred the necessary authority on the servant."¹ In one case the inn-keeper was held liable where a guest deposited his pocket-book, containing money, with the hotel clerk, and did not tell the clerk that there was money in it.² The reason for this decision is apparent, for one would not expect that anything excepting money would ordinarily be placed in a pocket-book, which is itself designed for the safe keeping of money and valuable securities. In another case, an inn-keeper was held liable for the loss of a guest's money where he retained his pocket-book in his own possession and was robbed.³ In Maryland it has been held that the guest need not deposit any money reasonably necessary for his expenses in the office safe, but that the inn-keeper will be liable for its loss if retained on his person.⁴ A number of other cases have maintained a similar doctrine,⁵ but they seem to be in conflict with the New York decisions which we have just noticed.⁶

It is almost an axiomatic principle that an inn-keeper's liability arises from the nature of his employ-

1, *Wilkins vs. Earl*, 44 N. Y., 174;

2, *Shoecraft vs. Bailey*, 25 Iowa, 553;

3, *Weislinger vs. Taylor*, 1 Bush., 275;

4, *Maltby vs. Chapman*, 25 Md., 307;

5, *Simon vs. Miller*, 7 La. An., 360; *Taylor vs. Monnot*, 4 Duer, 116; *VanWyck vs. Howard*, 12 How., 147; *Stanton vs. Leland*, 4 E. D. Smith, 88;

6, *Hyatt vs. Taylor*, 42 N. Y., 259;

ment; he is bound to take all possible care of the property of his guests deposited with his servants. Therefore in a case where a guest deposited money on the credit of the inn with a person acting as bar-keeper, the inn-keeper was held liable for the loss, and whether the deposit was made on the credit of the house is a question of fact for a jury.¹ The inn-keeper is not responsible for the loss or embezzlement of a guest's money where he does not make such deposit of it on the security of the inn, but intrusts it to another guest or inmate of the house for safe keeping in whom he reposes his trust and confidence.²

In England it is held that an inn-keeper's liability is not restricted merely to the money which may be necessary for the guest's traveling expenses,³ and a similar doctrine has prevailed in this State, although there is some conflict of opinion, as we have seen.⁴ When the safe was robbed by a discharged clerk, and the inn-keeper had told the guest he would not be responsible for any money put in it, the inn-keeper was held liable.⁵ If the guest should deposit his money with some person on the premises in whom he reposed confidence the inn-keeper would not be liable.⁶ In one case a man, who had paid attentions to the step-daughter of an inn-keeper, gave her a bag of money at the inn to keep. It disappeared and action was brought against the inn-keeper, but no recovery was

1, *Houser vs. Tully*, 62 Pa., 92;

2, *Sneider vs. Geiss*, 1 Yeates, 35;

3, *Coggs vs. Barnard*, Smith's Leading Cases, 309; *Lane vs. Cotton*, 12 Mod., 487; Wharton on Innk., 97;

4, *Cole vs. Goodwin*, 19 Wend., 251;

5, *Woodward vs. Bird*, 4 Bush., (Ky.), 510;

6, *Houser vs. Tully*, *supra*;

had.¹ The inn-keeper is liable for loss of a guest's property after it is packed preparatory to departure.²

EFFECT OF THE STATUTE.

In speaking of the effect of the act which authorized the putting in of a safe, it was said, that if the act of 1855 had any effect upon the nature of the liability of the proprietor of a hotel it is to create him a special bailee, by an implied contract, to safely keep and return, when he receives the money and jewels of his guest for deposit in his iron safe. The proof then rests upon him to establish that the loss occurred by the act of God, public enemies, or the neglect or misconduct of the owner. He is relieved from guarding the money and valuables belonging to the occupants of two hundred and fifty rooms of his large hotel; a liability of great and uncertain dimensions, which is reduced by this act to the vigilance and scrutiny required as to the custody of the key and the right delivery of the various parcels.³

The same judge further remarked that the liability of an inn-keeper for the goods of his guest, had been settled for centuries and that the act of 1855 does not purport to create it nor even to declare it. It assumes the liability. It enacts that whenever the proprietors of a hotel shall provide a safe in their office for the keeping of money, jewels or ornaments, belonging to their guests, and shall notify their guests thereof, and a guest shall neglect to deposit his money, jewels or ornaments therein, the proprietor shall not be liable for any loss of the same by his guest.

1, *Sneider vs. Geiss*, 1 Yeates, 24;

2, *Stanton vs. Leland*, 4 E. D. Smith, 88;

3, *Wilkins vs. Earl*, 44 N. Y., 174, per Leonard, J.;

This act assumes that before its passage, the inn-keeper was liable for the loss of the money, jewels or ornaments of his guest. It assumes that he still remains liable if a deposit is made by the guest of his money or jewels, according to the terms of the act. It neither enlarges or restricts the liability. It leaves it as the common law fixes it, with the condition as to money and jewels, that if a particular notice is given by the inn-keeper, the liability shall not attach unless such money or jewels are deposited in the office safe.¹

¹ 1, Wilkins vs. Earl, *supra*;

CHAPTER VI.

THE STABLES OF AN INN.

It is provided by section eight of chapter 628 of the laws of 1857 that every keeper of an inn, tavern or hotel, in any of the towns or villages of this State, shall provide and keep good and sufficient stabling, and provender of hay in the winter, and hay or pasturage in the summer, and grain for four horses or other cattle more than his own stock for the accommodation of travelers. This section also provides that for every default in having the articles required, such keeper shall forfeit ten dollars, to be recovered by the overseers of the poor for the use of the poor. It will be noticed that this section does not apply to cities in this State, but is only intended to regulate the establishment of inns in towns and villages where the traveler frequently desires accommodations for his beast of burden as well as for himself. The same reason for the rule does not apply to the hotels in our cities where guests usually arrive by some of the numerous lines of railroads, and depart in the same manner.

STABLES TO BE SAFE.

This provision of our statutes leads us to consider the liability of the common inn-keeper for the horses and vehicles of his guests which may come into his custody in a public capacity.

It is held that the inn-keeper is bound to provide safe stabling for the horses of his guest, and if any evil betide the animals from being improperly tied, or the stalls being in bad repair, the guest might recover for all damages sustained on that account.¹ When an action was brought to recover the value of a horse stolen from the stable of an inn, it appeared that plaintiff stopped at the inn with three horses and two servants for the night. The horses were put into a stable, which was very open, although there was a bar to one door and a good lock and key on the other. At the usual hour the hostler wished to lock the door but plaintiff's servants who slept in the barn objected to being locked in. In the morning one horse was found stolen out of the barn and the inn-keeper was held liable.²

OWNER NEED NOT BE PERSONALLY AT INN.

It was held in England that the master might maintain an action against the inn-keeper for his horse, goods, or money in a bag stolen from his servant while a guest at the inn, although the master was not himself a traveler or guest there.³ And so if the servant took the master's horse there on his master's business, though the master was not himself a guest.⁴ In Willcock's work on Inns, (p. 70,) he says: "It has been held that if one take the horse of another, and put it at an inn, and it be stolen, the owner cannot maintain an action because he was not a guest. But this seems to be contradicted by the decisions in

- 1, *Dickinson vs. Rodgers*, 4 Humph., (Tenn.,) 179;
- 2, *Newson vs. Axon*, 1 McCord, 509; 10 Am. Dec., 685;
- 3, *Beadle vs. Morris*, Cro. Jac., 224; *York vs. Grindstone*, Salk, 388; *Bennett vs. Mellor*, 5 T. R., 273;
- 4, *Saunders vs. Plummer*, Orl. Bridg., 223, 229;

which it has been held, that the owner is liable to pay for the keep of a horse placed at an inn under such circumstances, the obligation of the inn-keeper to protect and his right to retain for the expense being mutual. And this is supported by a dictum of Montague, C. J."¹

HORSES DYING OR INJURED IN STABLE.

It has been held that the inn-keeper is liable for the death of animals which have been entrusted to his care.² An inn-keeper agreed with the owner of a horse to entertain the man in charge of it, furnish the horse with provender, and allow it kept in a certain stall. It was injured in the stall and the inn-keeper showed that no one but the owner's servant took charge of it, yet he was held responsible.³ Where a horse was choked by its halter and died, and the inn-keeper showed it was tied by direction of the owner, and the owner showed that the stall was in a bad condition, the inn-keeper was precluded from giving further evidence.⁴

A guest after settling his bill, requested the landlord to get his team, and the landlord told him to go on and hitch up and he would be there soon. As the guest was leading his horses out, one of them was kicked in a fatal manner, and it was held the inn-keeper was liable; that unless there was some improper conduct on the part of the guest, the inn-keeper was as much liable as though leading them himself, as

1, 1 Rol. Abr., 3 E. 7; Robinson vs. Walter, 3 Bulster, 27, n;

2, Metcalf vs. Hess, 14 Ill., 129; Hill vs. Owen, 5 Blackf., 323;

3, Washburn vs. Jones, 14 Barber, 193;

4, Jordan vs. Boone, 5 Rich., 528;

the guest was simply doing what it was the duty of the inn-keeper to do himself, and was doing this also at his request.¹ It has been held that the inn-keeper was *prima facie* liable for a horse, which being delivered to him in a healthy condition in the evening, is found dead in the hotel stables in the morning.² The judge who delivered the opinion of the court in this case said: "The policy of the law has devolved upon inn-keepers a severe liability lest they may be tempted by motives of gain to collude with evil disposed persons, and afford facilities in purloining the property of their guests. This reason, we are aware, does not apply to the loss of property rendered useless by death; but as the tavern keeper has it more in his power to give to such an event the appearance of inevitable accident, by throwing around it delusive circumstances, than the owner of the property has to do away that appearance, we think there is sufficient reason why the death of the animal, while in his keeping, should be considered sufficient to charge him with the loss, unless he can exculpate himself by showing due care on his part."³

HORSES DESTROYED BY FIRE.

Defendant's intestate was an inn-keeper at Hartford, N. Y., and plaintiff's assignor was a farmer residing a few miles from that village. One Sunday morning he drove into the village for the purpose of attending church, and hitched his horse under the inn-keeper's shed; after church, he went to the inn and gave directions for putting his horse into the stable

- 1, Seymour vs. Cook, 53 Barb., 451;
- 2, Hill vs. Owen, 5 Blackford, 323;
- 3, Hill vs. Owen, *supra*;

for the night, which was done, the owner of the horse going to stay all night at the residence of his wife's parents near by, where he was in the habit of visiting. He purchased nothing at defendant's inn, and neither stopped or proposed to stop there. On the following morning, the stable of the inn was destroyed by fire, without the fault of the inn-keeper, or his servants, and the horse in suit was burned to death. The court held defendant not liable, as plaintiff's assignor, the owner of the horse, was not a guest at the inn, and this decision was affirmed on appeal.¹ The Delaware courts have recently held that if a traveler puts his horse in a stable attached to an inn, he is so far a guest although he does not stop at the inn himself that a liability arises.*

Porter, J., held in *Ingalsbee vs. Wood*, that as there was no negligence on the part of the landlord, he was not liable for the loss, unless he was an insurer of the property. There was no express contract of insurance and there can be none implied unless it spring from the relation of inn-keeper and guest. There was no contract, either express or implied, except for the keeping of the animal for the night; and this created no other or greater liability, than if the intestate, instead of being an inn-keeper, had been the proprietor of a livery stable.

HORSES INJURED BY NEGLIGENCE.

By the common law it was held that if an inn-keeper so negligently kept the horse put in his stable that it is taken out and ridden by a stranger, or a servant of the inn-keeper, so as greatly to injure the

1, *Ingalsbee vs. Wood*, 33 N. Y., 577;

2, *Russell vs. Fagan*, 8 Atlantic Rep., 258;

animal, the owner has an action against the inn-keeper for damages on account of the negligent keeping.¹ If the inn-keeper put the horse of the guest to pasture instead of keeping it in the stable, without the direction or consent of the guest; or if he put it there with the guest's consent, and by reason of pits, broken fences, or the gates being open, the horse is killed, stolen or lost, the inn-keeper is liable.² An inn-keeper is an insurer against injury happening to a guest's horse except such as is shown to have been caused by inevitable accident, the public enemy, or the guest or his servant.³

OWNER MUST BE GUEST AT INN.

Judge Nelson seemed of the opinion that it was not necessary in point of fact that the owner or person putting the horses to be kept at a public inn, should be a guest at the time, in order to charge the inn-keeper for any loss that might happen or to entitle him to the right of lien.⁴ The learned judge cited to sustain his position among other cases, that of *Mason vs. Thompson*, a Massachusetts decision, (reported in 9 Pick. 280,) which seemed to have been decided on the theory that one who contracts for the stabling of his horse is constructively an inmate of the inn. The correctness of this decision was later questioned by the court in which it was rendered,⁵ and in our own Court of Appeals Judge Porter stated that the decision in *Mason vs. Thompson* was made under a misap-

1, *Stanyon vs. Davis*, 6 Mod., 223;

2, 1 Rol. Abr. 3 F., 4, 5; *Cayle's Case*, 8 Rep., 32; *Saunders vs. Plummer*, Orl. Bridg., 223;

3, *Russell vs. Fagan*, 8 Atlantic Rep., 258;

4, *Peet vs. McGraw*, 25 Wend. 653;

5, *Berkshire Woolen Co. vs. Proctor*, 7 Cush., 425-6;

prehension of the law.¹ The soundness of this decision is also questioned by Bronson, J., who said that when, as in *Mason vs. Thompson*, the owner has never been at the inn, and never intended to go there as a guest, it seemed little short of a downright absurdity to say that in legal contemplation he was a guest, and frankly stated he was not disposed to follow the doctrine laid down in the earlier Massachusetts case.² In explaining the case of *Peet vs. McGraw*, (25 Wend. 653 *supra*,) he further said that they were referred to this case to prove that it was not necessary to the lien or liability of the inn-keeper, that the owner should be a guest. He most emphatically stated that the case decided no such thing, and that neither the Chief Justice nor any other member of the court intended to say, that either the lien or the liability could exist where the owner of the goods was not either actually or constructively the guest of the inn-keeper. He referred to the dictum of Nelson, J., which has been quoted above, as a single expression of the Chief Justice, which was not necessary to the decision of the cause, which was the construction of a pleading.³

WHAT CONSTITUTES OWNER A GUEST.

When the inn-keeper receives horses and carriages to stand at livery, the circumstance of the owner of such property subsequently taking occasional refreshments at the inn or sending a friend there to be lodged at his charge does not constitute such owner a guest, and therefore the inn-keeper has

1, *Ingalsbee vs. Wood*, 33 N. Y., 578;

2, *Grinnell vs. Cook*, 3 Hill, 486;

3, *Idem, supra*;

no right of lien.* In a leading case it appeared that by an arrangement between the inn-keeper and his hostler he had the profit of the stables, paying no rent, but providing hay, corn, etc., and supplying not only guests of the inn, but residents in the town whose horses he was allowed to take care of. The plaintiff, having no knowledge of this arrangement, arrived at the inn with a horse and gig, which were put in the stable and he became a guest of the hotel. He subsequently left for a short absence, saying he wanted his horse attended to. He did not return as soon as was anticipated, and in the meantime the hostler drove the horse for the purpose of exercise. While this was being done the horse took fright at a locomotive, and was injured. It was held that defendant was liable as the relation of inn-keeper and guest existed.*

HALTER-PULLING CAUSING DEATH.

In *Healey vs. Gray*, 68 Me., 489, it appeared that Healey drove plaintiff's mare from Concord to Salem and delivered her to defendant's hostler at the inn, to be kept till next day, Healey going to stop with his son-in-law in the same place. The next morning the mare was found dead in the stable; the evidence showed she was hitched in the usual manner and came to her death by halter-pulling, and there was evidence that she had such habit and also contrary evidence. The court held plaintiff was not a guest and said the defendant was liable only as an ordinary bailee for him, and as such bailee, a case was not made out. The court said that if the mare had the habit of

1, *Smith vs. Dearlove*, 6 C. B., 132, 17 L. J. C. P., 219;

2, *Day vs. Bother*, 2 H. & C., 14, 32 L. J. Ex. 171, 9 Jur. N. S., 440, 8 L. T., 205, 11 W. R., 575;

halter-pulling and that fact was known to the plaintiff it was his duty to communicate it to the inn-keeper or his servant, so that any and all necessary precautions might be taken to prevent any injury arising from this habit. If it was not known to the plaintiff, while he would be exonerated from negligence in not informing the defendant, yet he cannot justly impute negligence to the not guarding against the effect of a habit, the existence of which was unknown. The court thought the owner himself liable for her self-destruction and not defendant.

LIVERY STABLE KEEPERS.

Lord Holt said that a livery stable keeper had no lien on a horse which he had kept.¹ The common law rule does not extend to a livery stable keeper, for the reason that he only keeps the horse, without imparting any new value to the animal, and besides he does not come within the policy of the law, which gives the lien for the benefit of trade. Upon the same reasons the agister or farmer who pastures the horses or cattle of another has no lien at common law for their keeping, unless there is a special agreement to that effect.² The old cases remain unshaken and it must now be regarded as the settled doctrine that agisters and livery stable keepers have no lien, unless there be a special contract to that effect.³

1, York vs. Grenaugh, 2d Ld. Raym'd, 868;

2, Grinnell vs. Cook, 3 Hill, 49;

3, Wallace vs. Woodgate, 1 Car. & Payne, 575; Ry. & Moody, 193, s. c.; Bevan vs. Waters, 3 Car. & Payne, 520; Judson vs. Ethinde, 1 Crompt. & Mees., 743; Jackson vs. Cummings, 5 Mees. & Wels., 342. See Jacobs vs. Latour, 5 Bing., 130; 2 Moore & Payne, 201, s. c.; Saunders vs. Bell, 2 Mees. & Wels. 304; Scarpe vs. Morgan, 4 *Id.*, 270;

NEW YORK STATUTE.

As we have just seen, livery stable keepers had no right of lien at common law. By chapter 498 of the laws of 1872, a right of detention is given to them. The following is the statute :

SECTION 1. It shall be lawful for all persons keeping any animals at livery or pasture, or boarding the same for hire, under any agreement with the owner thereof, to detain such animals until all charges under such agreement for the care, keep, pasture or board of such animals shall have been paid ; provided, however, that notice in writing shall first be given to such owner in person, or at his last known place of residence, of the amount of such charges and the intention to detain such animal or animals until such charges shall be paid ; and such persons may at any time maintain an action in any of the courts of this State to enforce such lien and procure a sale of the said animals for the payment of said keeping, pasturage and board, and the costs of such action, whenever such sum shall exceed fifty dollars.

[Thus amended by laws of 1880, chapter 145.]

§ 2. From the time of giving such notice and while such horse or horses are so detained and no longer, such livery stable keeper or other person shall have a lien upon such horse or horses for the purpose of satisfying any execution which may be issued upon a judgment obtained for such charges. *

1, NOTE.—As the vocations of hotel keeper and livery stable keeper are so often combined in the same person, it seems proper to cite the above statute, though strictly it does not apply to inn-keepers *as such*.

INN-KEEPER'S LIEN ON HORSES.

If a traveler, having wrongfully taken a horse, put up at an inn and become a guest, the inn-keeper, provided he had no notice of the wrong, may assert his lien on the horse, even as against the true owner.¹

An inn-keeper who received the horses of a neighbor for the purpose of feeding and keeping them, the neighbor reserving the right to use them at his pleasure, brought suit against a deputy sheriff who levied on the horses and sold them, to recover his charges for keeping the horses, claiming he had an inn-keeper's lien for such charges. It was held that an inn-keeper who merely received the horses of a neighbor for the purpose of feeding them, had no lien, except by a special agreement.² If A injuriously take away the horse of B, and put him in an inn to be kept, and B come and demand him, he shall not have him until he hath satisfied the inn-keeper for his meat.³

H, an inn-keeper, furnished G, who was not his guest, but a mail contractor, with stables and provender for his horses for more than two years, during which time they were under the care of, and fed by the servants of G. It was held that H had no implied lien on the horses, for the debt thus contracted by G.⁴ The inn-keeper has no lien at common law on a horse placed in his stable, for the amount of its keeping, unless it was placed there by a guest at his inn.⁵

1, Grinnell vs. Cook, 3 Hill, 487;

2, *Idem*, *supra*;

3, Bacon's Abr., Inns and Innk., Title D.; approved in Grinnell vs. Cook, *supra*;

4, Hickman vs. Thomas, 16 Ala., 666;

5, Binns vs. Pigot, 9 C. & P., 208;

COMMON LAW RULES AS TO HORSES.

The inn-keeper contracts with the public the same engagement to receive and keep the horses of any who come to his inn, and even of those who choose only to put their horses into his stables, and themselves resort elsewhere, unless his stables are already full.¹ It was held in an English case that if an inn-keeper so negligently keep the horse put into his stable, that it is taken out by a stranger, or any of his servants, and ridden so as greatly to injure him, an action lies for the owner.² He was not answerable for the horse of his guest put to pasture by the guest's directions, unless it be lost, stolen, or killed through the negligence of the hostler or his servants, as by being put into a field where there are pits or ditches, or of which the fences and gates were broken, or open; for the field is not within the bounds of the hostel to which alone the liability of the hosteller, in that peculiar character extends.³

If the horse was stolen the inn-keeper was liable to an action on the custom of the realm, although the owner had gone away several days, and it was stolen during his absence.⁴ It was held the host was obliged to charge a reasonable price for keep of a horse, to be calculated according to customs of the adjoining markets, and if he makes a gross overcharge in his bill, the guest may tender a reasonable amount, which will entitle him to a verdict, or the inn-keeper might

1, Willcock on Inns, 47;

2, Stanyon vs. Davis, 6 Mod., 223-5;

3, 1 Rol. Abr., 3 F., 3, 5; Cayle's Case, 8 Rep., 32 a b.; Booth vs. Wilson, 1 B. A., 59;

4, See Fitzherbert's Nat. Brev., 943; Jelly vs. Clark, Cro. Jac., 189; Bacon's Abr., Tit. Inns and Innk., York vs. Grenaugh, 2 Ld., Ry., 687;

be fined for extortion.¹ If a horse were stolen and taken to an inn, the owner must still satisfy the inn-keeper's charges. If the inn-keeper in such case were not to have any lien, said Doderidge, J., "It were a pretty trick for who wants keeping for his horse."² If several horses were brought by the same person, each can be detained for its own keep only, and not for other horses.³

1, Oliphant on Horses, 128;

2, Robinson vs. Walker, Pop., 127;

3, Moss vs. Townsend, 1 Bulst., 207;

CHAPTER VII.

THIEVES IN HOTELS.

We now come to the consideration of the question as to whether or not the inn-keeper is liable for the loss of any property of his guests which may be stolen while they are sojourning at his inn. There have been various conflicting decisions on the subject, and the most erudite law commentators have differed upon the question of his liability, as we shall hereafter see. The weight of authority seems to be in favor of holding the inn-keeper to the same liability as a common carrier, and making him responsible for all losses not occurring through the act of God, the depredations of public enemies, or the negligence of the guests. He is virtually an insurer of the property of his guests, which they bring to the inn, and which they do not take the responsibility of looking after themselves; the negligence of the guest only, can absolve him from his liability at common law, except when the statute has modified his responsibility.

CONFLICTING DOCTRINES.

The Vermont courts hold that if the guest's room be burglarized and his property stolen, and if the inn-keeper can show that the burglar entered the room under such circumstances that the inn-keeper is free from blame, he would not be liable at the suit of his

guest for such stolen articles.¹ This decision has not been generally followed. In several cases the courts held the true idea to be to hold inn-keepers liable as common carriers, as insurers of the guest's property committed to their care, and liable for any injury or loss not occasioned by the act of God, nor by a common enemy, nor by the guest's own neglect or default.² In an English case the Court of Queen's Bench held the inn-keeper was bound to keep the goods of his guest without any stealing or purloining, and that it was no excuse for the inn-keeper that the guest left his door open.³ When a guest's trunk was taken to his bed room, where it was subsequently broken into and money stolen, it was held that the inn-keeper was liable.⁴

THE CONFLICTING DOCTRINES SUMMARIZED.

Judge Bennett, of the Supreme Court of California, has given an exhaustive opinion on the liability of an inn-keeper for goods stolen from the inn, from which several extracts are taken. He said: "It is claimed by the defendant that his house was burglariously entered, the bar-keeper overcome by force, and the property carried off by robbers; and that these circumstances exonerate him from liability. The question is, then, whether robbery from without, or burglary, will excuse an inn-keeper for the loss of the goods of his guest; and the answer to it does not ap-

- 1, *McDaniels vs. Robinson*, 26 Vt., 311; *Morse vs. Shea*, 1 Went., 190, 238;
- 2, *Mateer vs. Brown*, 1 Cal., 221; *Norcross vs. Norcross*, 53 Me., 163; *Pinkerton vs. Woodward*, 33 Cal., 557;
- 3, *Cashill vs. Wright*, 6 El. & B., 895;
- 4, *Epps vs. Hinds*, 27 Miss., 657. See also *Simon vs. Miller*, 7 La., An., 368;

pear to be settled by the authorities. Chancellor Kent (2 *Comm.* 591,) says that inn-keepers are responsible to as strict and severe an extent as common carriers, while, in another place (*id.* 593,) he limits their responsibility to losses occasioned otherwise than by inevitable casualty, or by superior force as robbery. Judge Story, in his work on Bailments, (sec. 472,) says, that inn-keepers are not responsible to the same extent as common carriers; that the loss of the goods of a guest, while at an inn, will be presumptive evidence of negligence on the part of the inn-keeper or of his domestics; but that he may, if he can, repel this presumption, by showing that there has been no negligence whatever, or that the loss is attributable to the personal negligence of the guest himself; or that it has been occasioned by inevitable casualty or by superior force. Thus, he continues, although a common carrier is liable for all losses occasioned by an armed mob, (not being public enemies,) an inn-keeper is not (*as it should seem*) liable for such a loss. Neither is he liable (*it should seem*) for a loss by robbery and burglary by persons from without the inn. It will be observed that the commentator advances this latter doctrine with some degree of hesitation and doubt, and in language which implies that he did not himself consider it as settled. Sir William Jones, in his essay on Bailments, (p. 94,) says, it has long been holden that an inn-keeper is bound to restitution, if the trunks or parcels of his guests, committed to him either personally or through his agents, be damaged in his inn, or stolen out of it by any persons whatever; and yet, he says, (p. 96,) that it is competent for the inn-holder to repel the presumption of his

knavery or default, by proving that he took *ordinary care*, or that the force which occasioned the loss or damage was truly irresistible.

"It thus appears, that, while Judge Story leaves the point under consideration at loose ends, the other two distinguished commentators above cited are still more uncertain, as neither of them apparently agrees with himself; and from their opposing rules, it is difficult to determine to which side of the question they intended to adhere. The contradiction found in the writings of commentators, as well as the diversity which exists in the decisions on which their various statements are rested, seem to have sprung out of a departure from the principles on which the extraordinary liability of inn-keepers and common carriers is based, and from what appears to be an erroneous construction put upon the doctrine laid down by Lord Coke in *Cayle's case* (8 Rep. 32;). * * *

"The reasoning of Coke is simply this: The inn-keeper is bound by law to keep the goods of his guest *safely*; if he does not perform this obligation, the law which imposes on him the responsibility, declares him to be in default; but if the loss of the goods be ascribable to the fault of the guest, then the inn-keeper is excused, for the words of the writ are *from the default of the inn-keeper or his servants*. He makes no distinction between losses occasioned by superior force, by robbery by persons within the house and persons from without, by secret theft, or by an armed mob. On the other hand he apparently discounts the distinction. * * *

"It seems, therefore, that the *dictum* of Mr. Justice Bayley, in *Richmond vs. Smith*, (8 Barn. & Cress, 9;)

is a concise and accurate summary of the doctrine of Cayle's case. 'It appears to me,' he says, 'that the inn-keeper's liability very closely resembles that of a carrier. He is *prima facie* liable for any loss not occasioned by the act of God or the King's enemies; although he may be exonerated where the guest chooses to have the goods under his own care;' and although that *dictum* has been overruled in England by the subsequent decision in *Dawson vs. Chamney*, (5 Adlp. & Ellis, N. R., 164,) we think the *dictum* right and the decision wrong. Stephen, in his Commentaries, (2 *Comm.*, 133,) says that an inn-keeper is responsible for the goods and chattles brought by any traveler to his inn, in the capacity of guest there, in every case where they are lost, damaged, stolen or taken by *robbery*, except when they are stolen by the traveler's own servant or companion, or from his own person, or from a room which he occupied as a mere guest, or entirely through his own gross negligence; and Mr. Chitty, in a note to Blackstone's Commentaries, (1 *Comm.*, 430, note 22,) declares it to be long established law, that the inn-keeper is bound to make restitution, if the guest is *robbed* in his house *by any person whatever*; unless it should appear that he was robbed under circumstances like those which, as above seen, constitute admitted exceptions."

After referring to *Mason vs. Thompson*, (9 Pick., 280, 284;) and *Grinnell vs. Cook*, (3 Hill, 488;) the learned judge continues:

"It thus appears that some courts as well as commentators are, at length, returning to the sound and healthy principle of the common law, which places the liability of inn-keepers and carriers on the same

ground. And why should there be any distinction? We think that an inn keeper is bound to keep the property of his guests safe from burglars and robbers without, as well as from thieves within, his house.”¹

THE PREVAILING DOCTRINE.

Edwards says: “He is responsible for goods stolen from his custody, or lost while in his custody; and he must respond for the damages where a guest in his house is robbed of money or goods.”² Judge Story, in his Commentaries, states the rule of liability for theft in peculiar terms, which show that he himself was not entirely free from doubt upon the subject. In the able opinion of Bennett, J., just referred to, the position of the learned commentator is freely discussed.³ Story evidently leaned toward the doctrine of holding inn-keepers liable as insurers of the property of their guests, for he said: “And this seems to be the doctrine of the modern English and the better considered of the American cases. This doctrine will clearly make inn-keepers liable for losses by robbery or burglary by persons from without, and also for losses occasioned by rioters and mobs.”⁴

SCOPE OF INN-KEEPER'S LIABILITY.

A Pennsylvania judge recently gave the following opinion: “He (the inn-keeper) is bound to take all possible care of the goods, money and baggage of his guests, deposited in his house, or intrusted to the care of his family or servants; and he is responsible

1, *Mateer vs. Brown*, 1 Cal., 221;

2, *Edwards on Bailments*, p. 407;

3, *Mateer vs. Brown*, *supra*;

4, *Story on Bailments*, § 472;

for their acts as well as for the acts of other guests. If the goods of the guests are damaged in the inn, or are stolen from it by the servants, or domestics, or by a stranger guest, he is bound to make restitution; for it is his duty to provide honest servants, and to exercise an exact vigilance over all persons coming into his house, as guests or otherwise. His responsibility extends to all his servants or domestics, and to all the moneys of his guests which are placed within the inn; and he is bound in every case to pay for them if stolen by a companion or servant of the guest.”¹ In a recent English case it was held that where property has been stolen from a guest, the inn-keeper is liable unless the guest has contributed by his own negligence to the loss.²

THE INN-KEEPER AN INSURER.

“Public policy imposes upon an inn-keeper a severe liability. The later and on the whole prevailing authorities made him an insurer of the property committed to his care, against everything but the act of God, or the public enemy, or the neglect or fraud of the owner of the property. He would then be liable

1, *Houser vs. Tully*, 62 Penn. St., 92;

2, *Filipowski vs. Merryweather*, 2 F. & F., 285;

NOTE.—For cases which hold the inn-keeper liable as an insurer and only exempt by act of God or the public enemy, see *Mateer vs. Brown*, 1 Cal., 221; *Shaw vs. Bessey*, 31 Me., 478; *Norcross vs. Norcross*, 53 Me., 163; *Burrows vs. Tieber*, 21 Md., 320; *Mason vs. Thompson*, 9 Pick., 280, 284; *Manning vs. Wells*, 9 Humph., 746; *Thickstone vs. Howard*, 8 Black., 535; *Sasseen vs. Clark*, 37 Ga., 242. For cases holding the contrary doctrine see *Metcalf vs. Hess*, 14 Ill., 129; *Johnson vs. Richardson*, 17 Ill., 302; *Howth vs. Franklin*, 20 Tex., 798; *McDaniels vs. Robinson*, 26 Vt., 316; *Read vs. Amidon*, 41 Vt., 15; *Kisten vs. Hilderbrand*, 9 B. Mon., 721; *Woodward vs. Morse*, 18 La. An., 156; *Cutter vs. Rumsey*, 30 Mich., 259; *Merritt vs. Claghorn*, 23 Vt., 177;

for a loss occasioned by his own servants, by other guests, by robbery or burglary from without the house, or by rioters or mobs.”¹

The rule is salutary, and should be steadily and firmly upheld. subject to the statutory regulations for the protection of hotel proprietors from fraud and negligence on the part of their guests.² The following extract from the opinion of Porter, J., in the case just cited, affirms that in this State inn-keepers are responsible in the same manner as common carriers for the property of their guests, and gives the reason for such a rule :

“ An inn-keeper is responsible for the safe keeping of property committed to his custody by a guest. He is an insurer against loss, unless caused by the negligence or fraud of the guest, or by the act of God or the public enemy. This liability is recognized in the common law as existing by the ancient custom of the realm. This custom, like that in the kindred case of the common carrier, had its origin in considerations of public policy. It was essential to the interests of the traveler, that every facility should be furnished for secure and convenient intercourse between different portions of the kingdom. The safeguards, of which the law gave assurance to the wayfarer, were akin to those which invested each English home with the legal security of a castle. The traveler was peculiarly exposed to depredations and fraud; he was compelled to repose confidence in a host, who was subject to constant temptation, and favored with peculiar opportunities, if he chose to betray his trust. The inn-

1, Parsons on Contracts, 623;

2, Hulett vs. Swift, 33 N. Y., 575;

keeper was at liberty to fix his own compensation, and enforce summary payment; his lien, then as now, fastened upon the goods of his guests, from the time they come to his custody. The care of the property was usually committed to servants, over whom the guest had no control, and who had no interest in its preservation, unless their employer was held responsible for its safety. In case of depredation, by collusion, or of injury or destruction, by neglect, the stranger, would, of necessity, be at every possible disadvantage; he would be without the means either of proving guilt or detecting it. The witnesses to whom he must resort for information, if not accessories to the injury, would ordinarily be in the interest of the inn-keeper. The sufferer would be deprived by the very wrong of which he complained, of the means of remaining, to ascertain and enforce his rights, and redress would be well nigh hopeless, but for the rule of law casting the loss on the party intrusted with the custody of the property, and paid for keeping it safely."¹

INN-KEEPER LIABLE FOR PROPERTY AT INN.

The inn-keeper is liable for the loss of his guest's property after it is brought *infra hospitum*. "The rule is severe but not unjust as considered with reference to the rights of the guests as well as the landlord," says Leonard, J. "The landlord can and does fix his compensation for entertainment furnished, and risks encountered. The guest must accept his terms or seek another inn. The landlord employs and controls the servants. He is secured in the payment of his charges by a lien on the property of his guest

¹ Porter, J., in *Hulett vs. Swift*, 33 N. Y., 510;

within his premises, which he may detain for his board and lodging."¹ In a case where the traveler, on coming to a hotel, requested his baggage to be taken to the commercial room, which was done, and it was afterwards stolen, it was held that the inn-keeper was liable, although the general custom was to place the baggage in the guest's room instead of the commercial, unless orders were given to the contrary. The chief judge stated that the host should have told his guest that he would not be responsible unless the goods were left in his room, if he had intended not to assume the liability of the commercial room.²

GUEST'S NEGLIGENCE EXONERATES INN-KEEPER.

In another case arising in the English courts, a traveler took his money out in a public room at the inn, and shortly afterwards went to his room for the night. There was a bolt and lock on the door but he did not choose to fasten it, and left his money in his clothing which was placed on a chair at his bedside; a thief entered his room through the door and stole the money, and the inn-keeper was held not to be liable.³ In a late Massachusetts case, the court decided that an inn-keeper was liable for articles stolen from the room of a guest if the loss was not actually attributable to the failure of the guest to comply with the reasonable regulations of the inn; and that in an action to recover for board and accommodations brought by the inn-keeper, the guest may recoup the loss thus sustained. In this case it appeared that the regulation, "Lock the door when going out and leave

1, *Wilkins vs. Earl*, 44 N. Y., 174;

2, *Richmond vs. Smith*, 8 Barn. & C., 9;

3, *Oppenheim vs. White Lion Hotel Co.*, L. R. 6 C. P., 515;

the key at the office," was posted in the guests' rooms and that the guest knew of the regulation, but that at the time his coat was stolen he did *not* leave the key at the office. The court upon appeal decided that while the statutes of that State had in a measure exonerated an inn-keeper from his common law liability for a loss sustained by a guest who has knowingly failed to comply with a reasonable regulation if the loss was attributable to such noncompliance, yet that the law did not relieve him from liability for loss only where the cause was attributable to noncompliance with the regulations of the inn.¹ In the case of *Herbert vs. Markell*, Q. B. Div Dec. 19, 1881, the action was against an inn-keeper for the loss of jewelry from rooms of the plaintiffs, husband and wife, his guests, by robbery at night. The defence was that plaintiffs were negligent in not bolting the door and in leaving the key on the outside; and secondly, because the wife wore the same evening conspicuously at dinner in the hotel, some of the jewelry which was stolen, and lastly because the articles themselves, instead of being deposited in some safe place were left lying carelessly around the room. The jury found for defendant, which was affirmed. The court said: "Assuming then that the door was not bolted in fact, was that *per se* evidence of negligence by the plaintiff? The cases which have been cited [*Oppenheim vs. White Lion Hotel Co.*, L. R. 6 C. P., 515, and *Spies vs. Bacon*, 36 L. T. (N. S.), 896,] showed that such an omission on the part of a guest was not by itself negligence, but that it was such an element to be considered with other facts which might be proved, and

1, *Babcock vs. Chapin*, 2 Northwest. Rep., p. 934;

which, taken together, might amount to negligence. Here there were other facts, of the slenderest nature no doubt, but still not such as should be excluded from the opinion of a jury; for instance, leaving the key in the lock outside, which was a temptation to thieves, and the wearing by the wife of her jewelry in public room a few hours before. For these reasons he thought the rule should have been discharged. Probably if he had been on the jury he would have found the other way, but what the court had to decide now was, not whether the verdict was against the weight of evidence, but whether there was any evidence in law to support it."

WHAT IS NOT EVIDENCE OF A GUEST'S NEGLIGENCE.

In discussing what would constitute negligence on the part of a guest so as to exonerate the inn-keeper, a Nebraska judge lately held that the age of plaintiff, the amount of money, the manner in which he carried it, the opening of portemonnaie at a railway depot for the purpose of paying fare, nor the counting of money in the hotel dining room, were not to be considered as negligence on the part of a guest.¹ It was lately held in England that a guest's omission to lock his door is not such negligence as will exonerate the inn-keeper from liability.²

PROPERTY STOLEN FROM SHEDS.

When the guest put his sleigh loaded with wheat, into an outhouse appurtenant to an inn, where loads of the kind were usually received but without specially committing it to the inn-keeper, and the grain was

1, *Dunbier vs. Day*, 12 Neb., 596; 41 Am. Rep., 772;

2. *Filipowski vs. Merryweather*, 2 F. & F., 285;

stolen in the night, it was held the inn-keeper was liable for the loss.¹ If a traveler, upon arriving at an inn, place his loaded wagon under an open shed, not appurtenant to the inn, and near the highway, and make no request of the inn-keeper to take it into custody, it was held the inn-keeper was not liable if the same or its contents were stolen.²

PROPERTY IN GUEST'S ROOM.

A guest's room in the hotel is not his dwelling, but it is the house of the inn-keeper, the guest having merely the temporary use of the room while at the inn. The legal possession of the room is in the hotel keeper and he must answer for loss of goods in the room by theft.³ Where plaintiff, a guest at defendant's inn, had some \$500, in money, and a gold watch and chain stolen from his room at night, and he did not lock or bolt his door on retiring, and no notice was shown as to fastening doors or as to depositing such property for safe keeping with the inn-keeper, it was held the guest was not necessarily negligent and could recover. The court said: "The entire room is safe for the guest if he comply with the rules of the inn. The deposit of anything in it is a deposit with the landlord — a delivery to him; unless therefore notified that he must not leave it in that room it is not negligence to do so."⁴ Where a guest retired to bed at night, after bolting his door, and was robbed of a pocket-book, watch and diamond pin which he was in the habit of wearing, the inn-keeper was held liable,

1, Clute vs. Wiggins, 14 Johns., 175;

2, Albin vs. Presby, 8 N. H., 409;

3, Rodgers vs. People 86 N. Y., 360;

4, Murchison vs. Sergeant, 69 Georgia, 206; 47 Am. Rep., 754;

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but was allowed to give evidence that the guest was intoxicated at the time as bearing upon the question of contributory negligence.¹

PROPERTY LOST BY GUEST'S SERVANT.

If a servant is robbed of his master's money or goods while he is a guest at an inn, his master, the owner of the goods, may obtain action against the inn-keeper.²

1, Walsh vs. Porterfield, 6 W. N. Cas., 149, Sup. Ct. Penna.;

2, Townsen vs. Havre de Grace Bank, (Md.) 6 Hous. & J.,
47;

CHAPTER VIII.

FIRES IN HOTELS.

The frequency of conflagrations in which the public inns are involved often gives rise to some interesting legal questions regarding the liability of inn-keepers in case of any loss happening to the guests by such means.

DISTINCTION BETWEEN LOSSES BY THEFT AND FIRE.

In the preceding chapter regarding the inn-keeper's responsibility for thefts we have seen that the better considered cases and the later text writers favor the doctrine of holding the publican to an insurance liability; but there are cases which seem to make a distinction between his liability from a loss happening from theft, and one occurring from a conflagration, even though the inn-keeper be as free from negligence in the one case as in the other. Therefore, the consideration of his liability in case of fire is made the subject of a separate chapter, although many of the authorities cited in the preceding chapter are doubtless in point where a loss by fire is under discussion.

INN-KEEPER NOT LIABLE IN SOME STATES FOR FIRES.

In some States the doctrine of holding him liable as an insurer of the property of his guest which may

be *infra hospitum* at the time of loss is strongly condemned, and the courts refuse to recognize such a rule. Thus, in a case where the horses and property of the plaintiff had been destroyed by a supposed incendiary fire at the defendant's inn, without fault or negligence on defendant's part, the court on appeal held that upon no authority previously decided was the defendant liable for the loss of such property, and that no principle of reason, or policy of justice required any such rule.¹ The doctrine of this case was afterwards approved in Michigan, where a case arose involving the inn-keeper's liability for a horse, wagon and some goods destroyed in his barn by fire which originated either through accident or incendiarism, without fault on the part of the inn-keeper.² The court held the inn-keeper not to be liable, distinguishing between his liability and that of a common carrier, and criticising Justice Porter's opinion in the New York case of *Hulett vs. Swift* (33 N. Y., 571).

ATTEMPTED DISTINCTION BETWEEN CARRIERS AND INN-KEEPERS.

The judge who delivered the opinion of the court in the case just referred to, went on to say that it was claimed that common carriers and inn-keepers stand on precisely the same footing, and that with one or two exceptions the cases referred to in support of that doctrine had arisen from thefts or unexplained losses of property while it was within the legal custody and protection of the inn-keeper, and the general rule applied had been that all such losses were presumably due to the neglect of the inn-keeper. Beyond this no

1, Merritt vs. Claghorn, 23 Vt., 177;

2, Cutler vs. Bonney, 30 Mich., 259;

decided case had been found, holding inn-keepers liable for any losses from purely accidental casualties, or from riots, or acts of force from without, such as have always been excepted by the best writers, who drew a line between carriers and inn-keepers.¹

THE CIVIL LAW DOCTRINE OF FATAL DAMAGE.

The Roman law made the inn-keeper liable for his guest's baggage unless he could exonerate himself by showing that the loss or injury occurred by reason of an inevitable casualty, or act of Providence, which being satisfactorily proven, relieved him from all responsibility. This rule has been followed in a Kentucky case where the court considered the question whether the destruction of a hotel by fire was such a casualty as an inn-keeper would be responsible for unless it be shown to have been caused by the negligence of himself or those under him, and said: "The destruction of the hotel by fire is not satisfactorily accounted for. Mrs. Vance and her daughter seemed to apprehend that it was by incendiary act of a former servant of theirs, who was then in the city, and who had, as they believed, on former occasions, attempted to fire their dwelling, whilst one or both of the landlords seemed to think it likely that it took fire by pouring down the dumb-waiter, made of plank and not lined with tin, ashes from the upper stories; but however this may be, it was a most disastrous casualty, both to the lessees and owners of the hotel; and nothing in the case shows it was from negligence, unless the want of metallic lining in the flue or dumb-waiter should be so determined. But no attempt was

1, Culter vs. Bonney, *supra*;

made to show that this flue had been recently erected or that a metallic lining had ever been in it, or if so, that it had been recently taken out; and, so far as appears, it may be presumed that this flue or dumb-waiter had been in use since the first erection of the house, in its then condition, and that no previous casualty had occurred from such use. The Prætor's edict in the Roman law, declaring that if shipmasters, inn-keepers and stable keepers did not restore what they had received to keep, he would give judgment against them, was construed to mean that the bailees were liable in every case of loss or damage, although happening without default on their part, unless it happened by what was called a fatal damage; but losses by fire, burglary and robbery, seem to have been deemed losses by fatal damages, as well as those by shipwreck, by lightning, by pirates, and by superior force. We think this but a reasonable doctrine; and though *prima facie*, the landlord should be held liable to restore the baggage of his guest, yet when he shows its destruction by fire, this should be regarded as exonerating him from liability unless it be made to appear that he, or those for whose comfort he is responsible, by negligence caused the fire or failed to extinguish it."

In speaking of this edict of the Roman Prætor, referred to in the foregoing opinion, Mr. Addison says: "The construction put upon this edict was, not that shipmaster, carrier or inn-keeper was bound to deliver the goods safe at all events; but that he was bound to deliver them unless prevented by a *fatale damnum*, or a loss by what was termed the decree of

1, Vance vs Trockmorton, 5 Bush, 41;

fate or order of destiny, such as a loss by lightning, or an earthquake, or a sudden inundation that would not have been foreseen, and that no human care or skill could have provided against or avoided; or an inevitable attack by pirates and hostile forces, the enemies of the State. The spirit of this edict has been universally adopted by the jurisprudence of continental Europe, and was introduced at an early day into our common law. * * * This extended responsibility of the inn-keeper, which makes him an insurer of the goods against loss by robbery, does not extend to losses occasioned by an accidental fire, nor to damage or injury to the goods which is the result of accident." The English courts have held a similar doctrine,² but this case is commented upon unfavorably in this country.³

THE INN-KEEPER AN INSURER AGAINST FIRES.

The reader observes that the foregoing opinion of Mr. Addison is based upon the civil law. An equally good authority says. "Fire, which could not have been avoided by the inn-keeper's diligence, is, by the Roman law, a defence; and so it has been held in this country, but the tendency of authority among us is to deny the validity of such a defence."⁴ The leading case on the subject arose in this State, and was decided in 1865. The action was against the executor of a deceased inn-keeper to recover the value of property destroyed in his room while plaintiff's servant was a guest at the inn. The court held that the inn-

1, Addison on Torts, Vol. I., § 684;

2, Dawson vs. Chamney, 5 Q. B. (N. S.), 164;

3, Mateer vs. Brown, 1 Cal., 225; and see Grinnell vs. Cook,
3 Hill, 488;

4, Wharton on Negligence, § 678;

keeper was liable for the loss of the goods of a guest by a fire the origin of which was unknown, the guest being free from negligence, and laid down the general proposition that by common law inn-keepers are insurers of the property of their guests against a loss happening by fire.¹ Mr. Schouler says there has been an obvious reluctance, in the few recent cases, to pressing the inn-keeper as the virtual insurer of the property of his guests in the house at the time of an accidental fire.²

STATUTORY LIMITATION OF LIABILITY.

The doctrine of *Hulett vs. Swift*, (*supra*), caused the legislature to enact a statute limiting the inn-keeper's liability in case of loss by fire at the next session held after the rendering of that decision, which reads as follows :

SECTION 1. No inn-keeper shall be liable for the loss or destruction by fire of property received by him from a guest, stored or being within the knowledge of such guest in a barn or other outbuilding, where it shall appear that such loss or destruction was the work of an incendiary, and occurred without the fault or negligence of such inn-keeper.

§ 2. No animal belonging to a guest and destroyed by fire while on the premises of any inn-keeper, shall be deemed of greater value than \$300, unless an agreement shall be proved between such guest and inn-keeper that a higher estimate shall be made of the same. [Chapter 658 of the laws of 1866.]

INN-KEEPER'S BURDEN OF PROOF.

It was held that under this statute the burden is

1, *Hulett vs. Swift*, 33 N. Y., 571;

2. Schouler on Bailments, 265;

upon the inn-keeper to show that the fire was the work of an incendiary, and also to show absence of negligence on his part, in order to claim the benefit of the act, and this will not excuse him from liability if there were any precedent negligence on his part.¹

EVIDENCE OF INCENDIARISM AND NEGLIGENCE.

In the case just referred to it appeared that evidence was given tending to show that the fire was the work of an incendiary; that it was set in the hay loft, and that kerosene was spread on the barn floor which caused the fire to spread. Plaintiff also showed that defendant's hostler was smoking in the barn that night, which might have caused the fire. It appeared that the barn doors were fastened, but that a window in the hay loft over a lane in the rear of the barn was left open, and that a pile of boards were there, so placed that any person could easily climb upon them and gain access to the hay loft by the window, and that soon after the commencement of the fire two unrecognized persons were seen to run out of the alley. Defendant offered to show that the same night on which the fire in question occurred an attempt was made to fire a building within forty rods of defendant's barn, where the buildings were close and compact, and that kerosene, paper and other combustibles were used in that attempt, but this was not allowed to be proven on the ground of its immateriality. Upon appeal the court said that the omission on the part of a bailee to use due care in protecting the property entrusted to him subjects him to liability for loss or injury resulting from such omission, and he is not exempt from responsibility, although the goods had been

1, *Faucett vs. Nichols*, 64 N. Y., 377;

lost by a third person's felony, if this negligence furnished the opportunity and occasion for the commission of such a felony. Continuing, Andrews, J., remarked: "It must be admitted that the fact that the window of the hay loft was kept open, and that the barn was accessible from the alley, is not very strong evidence of negligence. The crime of incendiarism is much less frequent than theft or robbery, and is prompted, ordinarily, by different motives. But we cannot say that the fact proved furnished no evidence upon the question of negligence. Negligence is usually a question of fact and not of law. The jury understood the condition and location of the premises, and as practical men could judge whether proper care^{*} required the defendant to keep the window of the loft closed, as a protection against incendiaries, who might from wantonness, revenge or other motive, upon opportunity offered, set fire to the premises. I am of opinion, therefore, that the question of the defendant's negligence was a question of fact and not of law, and was properly submitted to the jury, and that negligence on the part of an inn-keeper in omitting precautions which a reasonable and prudent man ought to take to guard against an incendiary fire, is such negligence as will deprive him of the benefit of the statute. The loss or destruction of the property of the guest does not in that case occur without the inn-keeper's fault or negligence. Negligence which precedes and facilitates the commission of the crime, is as much within the statute as the negligence or omission to protect or remove the property of the guest after the fire had commenced. The character

of the fire, whether incendiary or not, was sharply contested. Each party has the right to show any circumstance in support of his theory as to the origin of the fire, which legitimately tended to establish it."

In reference to the offer made upon the trial to prove that an attempt was made the same night to burn a building near by, the learned judge observed: "This evidence was objected to as immaterial, and was excluded by the judge. I am of opinion that the evidence offered was admissible. The offer was to show the active attempt in the same night to burn another building in the same village, by the use of similar means, as the evidence on the part of the defendant tended to show, were used in firing the barn. The fact in issue, to which this evidence related, was whether the defendant's barn was fired by an incendiary. If there had been a series of incendiary fires in that village previous to and near the time of the fire in question, could not this fact have been shown in aid of the defence? It cannot be denied that in connection with the other circumstances proved, it would have produced upon the mind a strong conviction that the fire in the defendant's barn was also caused by an incendiary. The proof offered was not merely of facts tending to establish a presumption, that an attempt to fire another building on the same night had been made, but of an attempt made which failed. There was here no uncertainty as to the collateral fact sought to be proved, and if the fact had been admitted that incendiaries were at work in another place in the same village, on the same night, it would have had a direct and material

bearing upon the question as to the character of the fire which destroyed the barn."¹

FIRE ESCAPES IN HOTELS NECESSARY.

The Legislature of this State passed an act "to provide fire escapes in hotels," on June 25, 1887, being chapter 720 of the laws of 1887, which reads as follows:

SECTION 1. Every owner, lessee, proprietor, or manager of a hotel situated in the State of New York, exceeding two stories in height, shall, on or before the first day of July, 1887, place, or cause to be placed, a rope, or other better appliance, to be used as a fire escape, in every room of said hotel used as a lodging room, except the rooms on the ground floor, which rope, or other better appliance, shall be securely fastened at one end of it to a suitable iron hook or eye, to be securely driven or secured into one of the joists or timbers near adjoining the frame of the window, in one of the windows of said room, which rope shall be at all times kept coiled up and exposed to the plain view of any occupant of said room, the coil to be fastened in such slight manner as to be easily and quickly loosened and uncoiled, and such rope shall not be less than three-fourths inch in diameter, and of sufficient length to reach from such window to the ground. Such rope, iron hook, or eye and fastening shall be of sufficient strength to sustain a weight of four hundred pounds. It shall also be the duty of every such owner, lessee, proprietor or manager to post, or cause to be posted in a conspicuous place in each room, and in each hall of such hotel,

1, *Faucett vs. Nichols, supra*;

except the rooms and hall on the ground floor, a printed notice to the effect that a rope is so placed in every such room of said hotel, except the rooms on the ground floor, for use in case of fire, and giving full directions for such use.

SEC. 2. It shall be the duty of the chief engineer, or the officer performing the duties of a chief engineer of a fire department of every city and village of this State, in the months of July and January of each and every year, to inspect or cause to be inspected by some person to be deputized by him for that purpose, every room of every hotel in the city or village in which he is performing the duties of such chief engineer, and ascertain if the provisions of Section 1 of this act are complied with. And any owner, lessee, proprietor, manager or other person, who shall obstruct or prevent such officer or person from making a free inspection of said rooms provided for as aforesaid, shall be liable to a penalty of fifty dollars for each and every offense, to be recovered by a civil suit brought in the name of the people in any court of the State. It shall be the duty of every such person making such inspection on or before the fifteenth days of August and February of each and every year, to make and file a written report with the mayor, president, or other officer performing the duties of the chief executive of such city or village, showing what hotels he has so inspected, and specifying which of them have fully complied with the provisions of this act, and which, if any, have not, and in what respects, and to what extent. Such mayor, president, or other chief executive officer shall thereupon, and within ten days, after such report is so rendered to him, shall

make and present to any court or magistrate having jurisdiction of crimes, of the grade of a misdemeanor, and procure a warrant for the arrest of every person so reported as violating the provisions of this act.

SEC. 3. Any officer or person violating any of the provisions of this act is guilty of a misdemeanor, and is punishable by imprisonment in a penitentiary or county jail for not more than one year, or by a fine of not more than one thousand dollars, or by both.

SEC. 4. This act shall not apply to fire-proof hotels.

SEC. 5. This act shall take effect immediately.

SCOPE OF THE STATUTE.

It will be observed that this act applies only to hotels exceeding two stories in height; also that the hotel keeper or owner is obliged not only to furnish fire escapes, but to post notices, or cause them to be posted in the rooms and halls above the ground floor, stating that a fire escape has been provided, and giving directions for its use. The second section imposes the duty of semi-annual inspection on the chief engineer of fire departments, and makes any person obstructing such inspection liable to a penalty. The officer making inspection is required to file a written report with the chief executive officer of the city or village, and this officer in turn is obliged to arrest all offenders against this section, as it shall appear from the report so filed that they are liable. These are mandatory provisions, and the statute makes any violation of them a misdemeanor. The legislature is to be commended for its wisdom in enacting this statute, which should be rigidly enforced.

CHAPTER IX.

THE INN-KEEPER'S LIEN.

We have already seen that the inn-keeper is liable as an insurer of the property of his guest, after it is brought to the inn. The principles of equity on which the law is founded, by way of compensation to the inn-keeper for the extraordinary liability to which he is held, give him a lien on the goods of his guest entrusted to him to satisfy his reasonable charges for entertainment.

DETAINING GUEST'S PERSON.

In former times this policy of the law allowed him even to detain the person of his guest and the personal clothing which he was then wearing,¹ but this doctrine is obsolete, and it is now held that the lien does not extend to the person of the guest, or the clothing he is actually wearing at the time of distraintment.² "This latter doctrine," observes Story, "seems founded in all the just analogies of the law applicable to cases of distress."³

* In the case of *Sunbolf vs. Alford*, the judges were unanimous in pronouncing the right of the inn-keeper

- 1, *Newton vs. Trigg*, 1 Shower, 270 ; *Bac. Abr.*, Inns and Inn-keepers, D. ;
- 2, *Sunbolf vs. Alford*, 1 *Hom. and Hurl.*, 13 ; 3 *Mees. and Wells.*, 248 ; *McDaniels vs. Robinson*, 26 *Vt.*, 335 ; *Grinnell vs. Cook*, 3 *Hill*, 488 ;
- 3, *Story on Bailments*, § 476 ;

to detain the person or clothing of his guest as simply scandalous and absurd. One of them asked if the inn-keeper could take off all the clothing of his guest, male or female, in order to obtain a sufficient pledge; this idea certainly could not be entertained, it was held, for the reason that clothing on the person and in the possession of the guest are not goods to which the lien will attach, and as to the detention of the guest's person it was said that if the host had any right to detain a guest for not paying his bill, he had a right to keep him in detention until the bill was paid, which might be all his life, so that when a man could not be imprisoned by common law for the debt, the inn-keeper might make a prisoner of him.¹ This was characterized as monstrous and startling.

THE REASON FOR THE LIEN.

The right of lien of the keeper of an inn is settled at common law, and is based upon sound reasons. He was compelled to receive the guest, and to pay for all property lost or stolen while the guest remained, and nothing excused him from this liability but the act of God, or the public enemy. On account of this extraordinary liability, the law gave the inn-keeper a lien upon the goods of his guest, for the satisfaction of his reasonable charges.²

ONLY INN-KEEPERS HAVE LIEN.

One who lets out rooms in the upper part of a building to lodgers but does not supply them with meals, but leases the basement of the building to another person who keeps a restaurant as an independent establishment from which access may be had to

1, See *Sunbolf vs. Alford*, 3 M. and W., 248;

2, *Jones vs. Morrill*, 42 Barber, 325;

the lodging room, is not an inn-keeper, and therefore he has no lien as such on the property of his lodgers.¹ A person who is not an inn-keeper has no lien at common law.

RELATION OF HOST AND GUEST ESSENTIAL.

In order for an inn-keeper to acquire a lien upon any property which is brought to the inn, it is necessary that the relation of inn-keeper and guest exist. "It is essential to the lien that the goods shall be received from one who is either actually or constructively the guest of the inn-keeper. There must be such a relation; but it is not necessary to its existence that the owner of the goods should be actually *infra hospitum* at the time the loss happened or the lien accrued."² The inn-keeper has no lien on the goods of a friend or boarder.³ It has been held that if a person came to an inn as a guest, his coming afterward to board by the week would not alter the relation so as to deprive the inn-keeper of his lien.⁴

The liability of the inn-keeper as an insurer, presupposes the relation of host and guest. It had its origin in an ancient custom of the realm, which fixed the correlative rights and obligations of the parties, by securing to the traveler a special remedy for his goods, and to the host, a specific lien for his charges. These were peculiar and mutual rights, necessary to the particular relation. But an inn-keeper is not restricted to the special business of his calling, and he

1, *Cochrayne vs. Schryver*, 12 Daly, 4174 ;

2, *Edwards on Bailments*, p. 411 ;

3, *Pollock vs. Landis*, 36 Iowa, 651 ; *Hursh vs. Byers*, 29 Mo., 469 ; *Ewart vs. Stark*, 8 Rich., 423 ; 2 Story on Contracts, 139, § 744 ;

4, *Berkshire Woolen Co. vs. Proctor*, 7 Cush., 417 ;

is free to contract with those who do not care to become his guests. When he receives property from one who is neither a guest nor a traveler, the custom of the realm has no application. The property is subject to no lien and protected by no insurance. This obligation is simply that of an ordinary bailee for him.¹ Where the inn-keeper makes a special contract for board and lodging by the month or week it has been held he would have no lien.²

PROPERTY OF THIRD PERSONS.

The law does not require an inn-keeper to make inquiry as to whether or not the property which a guest carries with him belongs to him or not, if he has no reason to think it does not. He may have a lien on the goods of a third party if brought to the inn. The lien extends to property brought by the guest and not owned by him.³ Thus, if A. injuriously take away the horse of B., and put him in an inn, to be kept, and B. come and demand him, he shall not have him until he hath satisfied the inn-keeper for his meat.⁴ "And that is good law to this day, if the inn-keeper have no notice of the wrong and act honestly."⁵ "The law invests an inn-keeper with some peculiar privileges," says Story, "for he has a lien upon the goods of his guest, for his board and lodging, and the liquors supplied him. He has also a lien on the goods brought by his guest to the inn, although they are only hired by the guest from a third party; at least, if that fact be not known to the inn-

- 1, *Ingalsbee vs. Wood*, 33 N. Y., 578, per Porter, J.;
- 2, *Misch vs. O'Hara*, 9 Daly, 361 ;
- 3, *Jones vs. Morrill*, 42 Barb., 325 ;
- 4, *Bacon's Aur.*, Inns and Inn-keepers, Title D. ;
- 5, *Grinnell vs. Cook*, 3 Hill, 485 ;

keeper. But later cases have declared that if the inn-keeper knows when the goods are brought, that they do not belong to his guest, he cannot detain them for his bill."¹ In a late English case it was held that the goods brought by a guest to the inn are subject to the lien, though they may turn out to be the goods of a third party, provided they are such as a person might ordinarily travel with.² An inn-keeper's lien extends to all the goods which he has actually received with the guest, whether he was bound to receive them or not, and which are not the guest's own property.³

HOW LIEN EXTINGUISHED.

The inn-keeper may lose his right of lien, even after it is acquired, by his own act. It is held that an inn-keeper waives his lien on the goods of his guest if he wrongfully sells them.⁴ It seems that if a guest should bring with him several horses to an inn, and should take away all but one of them, the landlord would lose his lien on those taken away, and could only distrain the remaining horse for his own keeping, not for that of the others taken away.⁵ By parting with the possession of the property on which he has a lien, the lien is lost; if the owner gets the property into his own hands without fraud, the lien is ended and can-

1, Story on Bailments, § 476; see also *Broadwood vs. Granara*, 10 Ex., 417; 28 English Law and Equity, 443, and note; *Carlisle vs. Quattlebaum*, 2 Bailey, 452; *Fox vs. McGregor*, 11 Barbour, 41; *Binns vs. Pigot*, 9 Car. & Payne, 208;

2, *Smead vs. Watkins*, 1 C. B., N. S., 276;

3, *Threefall vs. Borwick*, 10 L. R., Q. B., 210;

4, *Mulliner vs. Florence*, 3 Q. B. D., 484;

5, See *Moss vs. Townsend*, 7 Bulst., 206, 217;

not be revived by a subsequent return of the goods.¹ Taking a note for the debt for which the goods are restrained will operate to extinguish the lien if the note be payable in the future.²

The lien may also be extinguished by a tender of the amount due to the inn-keeper, and if he refuse to accept the amount due when tendered, he loses all right to detain the goods.³ In some cases a tender would be unnecessary, as when the host demands more than he is entitled to.⁴ The tender must be in accordance with law, and for the amount due. The tossing of a handful of money on the table and telling the host to take it if he will accept it in full of the bill, is not a valid tender so as to extinguish the lien, as it has been held.⁵ If the inn-keeper previously agree to give credit to his guest, he forfeits his right of lien.⁶ The detention is in the nature of a pledge, or on account of an implied lien, so that if the hosteller permit his guest to take away his horse, he gives him credit, and cannot afterwards retake it, for that is a relinquishment of the pledge.⁷

It is held that the inn-keeper's lien on horses is not lost simply because the inn-keeper allows the owner to drive the horses from day to day, *animo reverendi*.⁸ If the owner of goods on which another has a lien, obtain them from the lienor without fraud, the

- 1, Bevan vs. Waters, 3 Car. & Payne, 520; Jones vs. Thurloe, 8 Mod., 172; Jones vs. Pearle, 1 Str., 556; Sweet vs. Pym, 1 East., 4; 5 Mees & Wel., 342;
- 2, Horncastle vs. Farren, 2 Barn. & Ald., 497;
- 3, Ratcliff vs. Davies, Cro. Jac., 244;
- 4, See Allen vs. Smith, 12 Com. B. N. S., 644;
- 5, Gordon vs. Cox, 7 Car. & Payne, 172;
- 6, Jones vs. Thurloe, 8 Mod., 172;
- 7, Willcock on Inns, 79; see Jacobs vs. Latour, 5 Bray., 130;
- 8, Allen vs. Sweet, 12 C. B., N. S., 638;

lien is at an end; nor will it be revived by a return of the goods.¹ If the inn-keeper suffer a horse to be taken away and he is again brought to the inn he cannot be detained for his former demand. If he receive a stage coach, and from time to time suffer the coach and horses to depart without payment, he cannot afterwards detain the coach and horses for what was formerly due.² If the inn-keeper accepts security from a guest for payment of his hotel bill, it does not waive his common law lien unless there was something in the nature of the security, or in the circumstances under which it was taken, which is inconsistent with the existence of the continuance of the lien, and therefore destructive of it.³

EXTENT OF THE LIEN.

The inn-keeper has a lien only on such property of the guest as has been delivered into his custody, and for which he would be responsible in case of loss.⁴ The Iowa courts have held that the lien extends to property exempt by law from execution. The judge who wrote the opinion said that when a lien is given it may, of course, be enforced, and that had the party given a chattel mortgage on his coat to secure his hotel bill no one would doubt the inn-keeper's right to foreclose it, notwithstanding the coat might be a part of his ordinary wearing apparel. He said that when the party became a guest at his hotel, he gave the inn-keeper a lien upon his coat as effectually as if he had given him a mortgage on it. The law implied

1, Grinnell vs. Cook, 3 Hill, 486;

2, See Bird's Select Cases, p. 50;

3, Angus vs. McLachlan, 23 Ch. D., 330, 52 L. J. Ch., 587.
48 L. T., 863, 31 W. R., 641;

4, Edwards on Bailments, 413;

that from the act of becoming a guest and taking his coat with him. He thought the rule too well established to require support from authorities, and further said it was obvious that without such a rule the business of hotel keeping could not be done.¹

It is held that the right of an inn-keeper to detain horses for their keeping, does not extend to horses of individuals which are employed in carrying the United States mails.² The horse cannot be detained for the owner's bill,³ nor can property of the guest be detained for horse-keeping.⁴ The inn-keeper has a lien on a carriage, brought to the inn by his guest, for its standing room, and this is so even if the vehicle does not belong to the guest himself.⁵ The inn-keeper has also a lien on the goods of his guest for money loaned to him if it was agreed between them at the time of making such loan that the goods should become security for it.⁶ It seems to be well settled that the lien is not confined to the goods or property of the guest which the host is legally bound to receive, for if he receives such property into his inn, he becomes responsible for its safe keeping, and therefore has a lien upon it for his charges.⁷

LIEN ON PIANO.

A person went to an inn and stayed with his family for some time; he took with him to the inn a piano,

- 1, *Swan vs. Bournes*, 47 Iowa, 501, 29 American Rep., 492;
- 2, *U. S. vs. Barrey*, 2 Wheeler's Crim. Cases, 513;
- 3, *Moss vs. Townsend*, 7 Bulst., 207, 217;
- 4, *Westbrook vs. Griffin*, Moor, 876; *Rosse vs. Bramstead*, 2 Roll. Rep., 438; *York vs. Greenough*, 2 Ld. Ry., 687;
- 5, *Terrill vs. Crowley*, 13 Jur., 878, 13 Q. B., 197, 18 L. J. Q. B., 155;
- 6, *Proctor vs. Nicholson*, 7 C. & P., 67;
- 7, *Threefall vs. Borwick*, 10 L. R., Q. B., 210;

as his own, which he had hired. The inn-keeper claimed to hold the instrument as against its owner for the board and accommodations furnished to the person bringing it to the inn. It was held that whether or not he was bound to take the piano into his inn, having done so, without knowledge that it belonged to a third person, he was entitled to detain it.¹ When, however, a person lent a pianoforte to a professional pianist, while he was staying at an inn as a guest, the inn-keeper well knowing that it was not the property of his guest, it was held that he had no right of lien.²

CARE TO BE USED IN KEEPING DISTRAINED PROPERTY.

As to the care necessary to be used by the inn-keeper to preserve property distrained by virtue of his lien. It was said that an inn-keeper holding goods by his right of lien is not bound to use greater care as to their custody than he uses as to his own goods of a similar description.³

SURRENDER OF LIEN AND RETAKING.

If a third party agree to satisfy the inn-keeper for the meat of a horse in consequence of its being surrendered to the guest, it is a good consideration, inasmuch as the inn-keeper loses the detention which is the damage, and the guest retains the horse, which is the advantage.⁴ When the owner of a horse has fraudulently got possession in order to defeat the

1, *Threefall vs. Borwick*, 10 L. R., Q. B., 210, 44 L. J., 87;

2, *Broadwood vs. Granara*, 10 Ex., 417, 24 L. J., 1;

3, *Observations on Colwell vs. Simpson*, 16 Ves., 275, in *Angus vs. McLachlan*, 52 L. J. Ch., 587; 48 L. T., 863;

4, *Hutton*, 101;

lien, the inn-keeper may retake by force, at common law, but he must make fresh pursuit of it, and retake it, else the custody is lost, for he cannot take it at any other time, as it is in the nature of a distress. But when there is a lien by agreement, it is in the nature of a pledge, and he may retake not only on fresh pursuit, but whenever he finds it.¹ When a man with two race-horses and a groom went to the inn, and remained there several months, taking his horses out every day for exercise and training, and occasionally being absent several days, but always with intention to return, it was held that the relation of host and guest is presumed to continue until the contrary appears, and that the occasional absences did not destroy the lien.² It was also held in the same case that the fact that the inn-keeper claimed a lien for the whole time, when he was entitled to a claim for a part only, was not such exercise of claim as to dispense with a tender of the amount actually due.

CONTEMPORANEOUS LIENS ON SAME PROPERTY.

It may sometime happen that several inn-keepers may have existing rights in the same property at the same time. In that case it would be proper for any one of these to give notice to the others before relinquishing possession, and the safer course to pursue. In a case arising in Missouri it appeared that the defendant, an inn-keeper, held goods of a guest to satisfy his bill. The plaintiff in the action was also an inn-keeper, and was applied to by the same person

1, *Rosse vs. Bramstead*, 2 Roll., 438;

2, *Allen vs. Smith*, 12 C. B. N. S., 638, 31 L. J. C. P., 306;
Affirmed on Appeal, 9 Jan. N. S., 128;

who had been the guest of defendant, for accommodations. This person promised plaintiff a lien for such accommodations on the same baggage held by defendant, subject, however, to defendant's right of lien. The defendant agreed with plaintiff to hold the luggage until both bills were paid by the guest, and not to give it up to him until he had paid plaintiff's bill as well as his own. In violation of this agreement, defendant surrendered the baggage to the guest after his own bill was paid, in consequence of which plaintiff lost the amount due him for keeping the guest and his wife. The court held that defendant's promise to retain possession of the property until both bills were paid, was founded upon a good consideration; that the plaintiff received an injury by trusting to defendant's promise, and that while defendant's position was not precisely that of a depository, it was analogous to it. The court held the transaction to be in the nature of a voluntary bailment, and of an agreement to enable the guest to obtain credit, and held defendant liable. The court stated that if the defendant was unwilling to hold the property any longer after his own bill was paid, he should have notified plaintiff to take it away, and not having done so, he had no right to deliver it to the defendant's guest.¹

FORECLOSING THE LIEN.

The statute of this State provides an easy method for the enforcement of a lien on the baggage or effects of one who is delinquent in the payment of the proper charges for his entertainment. Chapter 530, of the laws of 1879, reads as follows:

1, Hartzell vs. Saunders, 49 Mo., 433;

SECTION 1. Any hotel keeper, inn-keeper, boarding-house or lodging-house keeper, who shall have a lien for fare, accommodation, or board upon any goods, baggage or other chattel property, and in his possession for a period of three months at least after the departure of the guest or boarder leaving the same, or who, for a period of six months, shall have in custody any unclaimed trunk, box, valise, package, parcel, or other chattel property whatever, may proceed to sell the same at public auction, and out of the proceeds of such sale may, in case of lien, retain the amount thereof, and the expense of advertisement and sale; and, in case of unclaimed property, the expense of storage, advertisement and sale thereof; provided, in all instances, the notice specified in the next section be first given as therein directed.

SEC. 2. Fifteen days at least prior to the time of the sale, a notice of the time and place of holding the sale, and containing a brief description of the goods, baggage and articles to be sold, shall be published in a newspaper of general circulation, published in the city or town in which such hotel, inn or boarding-house is situated; but if there be none, then in such newspaper published nearest said city or town; and shall also be served upon said guest, boarder or owner of such chattel articles and property, if he reside or can be found within the county where said hotel, inn, boarding-house or lodging-house is situated, by delivering the same to him personally, or leaving it at his place of residence with a person of suitable age in charge thereof. But if such guest, boarder or owner does not reside or cannot be found in said county, then said notice shall be deposited in

the post-office of said city or town, with the postage prepaid thereon, fifteen days prior to said sale, and addressed to said guest, boarder or owner at his place of residence, if he left his address, or it be otherwise known to said hotel, inn, boarding-house keeper or lodging-house keeper. The sale shall take place between the hours of ten o'clock in the forenoon and four o'clock in the afternoon and all articles sold shall be to the highest bidder for cash.

SEC. 3. Such hotel keeper, inn-keeper, boarding-house keeper or lodging-house keeper shall make an entry of the articles sold, and the balance of the proceeds of the sale, if any, and within ten days from such sale shall, upon demand, refund such balance and surplus to such guest, boarder or person leaving the articles sold.

SEC. 4. In case such balance shall not be demanded and paid as specified in the last section, within said ten days, then within five days thereafter said hotel keeper, inn-keeper, boarding-house keeper or lodging-house keeper shall pay said balance to the treasurer of the county, or chamberlain of said city, as the case may be, and shall at the same time file with said treasurer or chamberlain an affidavit made by him, in which shall be stated the name and place of residence, so far as they are known to him, of the guest, boarder or person whose goods, baggage or chattel articles were sold, the articles sold, and the price at which they were sold, the name and residence of the auctioneer making the sale, and a copy of the notice published, and how served, whether by personal service, or by mailing, and if not so served, the reason thereof.

SEC. 5. Said treasurer or chamberlain shall keep said surplus moneys for and credit the same to the persons named in said affidavit as said guest, boarder or person leaving the articles sold, and shall pay the same to said person, his or her executors or administrators, upon demand and evidence satisfactory to said treasurer or chamberlain furnished of their identity.

SEC. 6. Nothing herein contained shall preclude any other remedy now existing for the enforcement of hotel keepers', inn-keepers', boarding-house keepers' or lodging-house keepers' lien, nor bar their right to recover for so much of the debt as shall not be paid through said sale.

At common law the inn-keeper's lien did not give him a right to sell the goods of a guest to satisfy his charges against him; he was obliged to enforce the lien by an action in the nature of a bill in equity.¹ He may still pursue his common law remedy independently of the statute.

By chapter 738 of the laws of 1869, the keepers of inns, boarding-houses, etc., had the right to bring a specific action for the enforcement of a lien, and the foreclosure thereof. The act provided for the form of judgment, manner of sale, etc. It was repealed by chapter 245 of the laws of 1880.

The Code of Procedure of this State provides that an action may be maintained to foreclose a lien upon a chattel for a sum of money when such a lien exists at the commencement of the action, and provides the

1, Fox vs. McGregor, 11 Barb., 41; 1 Str., 556; Pothonier vs. Dawson, 1 Holt N. P., 383, and see Edwards on Bailments, p. 414.

manner of carrying on such action.¹ Under this provision the liens of inn-keepers and boarding-house keepers can be foreclosed.

1, See Code Civil Procedure, sections 1737 to 1741 inclusive.

CHAPTER X.

BOARDING-HOUSES.

The boarding-house may be said to be a creature of the statute. All the privileges and immunities which proprietors of such houses now enjoy have been specifically conferred upon them by acts of the Legislature. At the common law the keeper of a boarding-house had none of the privileges of an inn-keeper; he could not detain the baggage and effects of a delinquent boarder which were in his house because he had no right of lien, and he often suffered great hardships, and was subject to gross impositions on this account. Consequently, his obligation to look after and preserve the effects of a boarder was very slight, if any existed. The Legislature of this State has given to boarding-house keepers the same privileges as are enjoyed by inn-keepers in regard to detaining the baggage of boarders who do not pay their bills, and as to arresting those who attempt to defraud them. This sweeping change in the legal status of boarding-house keepers, has brought with it some corresponding changes from the common law liability of the keepers of such houses.

WHAT IS A BOARDING-HOUSE?

It is not every house in which one or two additional members of the family are received for compensa-

tion that will fall within the purview of these statutes, and the following is submitted as my definition of a boarding-house:

A boarding-house is a house for the entertainment of persons who are not travelers or transients, but who are usually fed and lodged under a special contract to pay a certain sum for the accommodations furnished for a specified time, the keeper of which holds out to the public that persons will be received as boarders.

Judge Johnson has shown what is essential to constitute a boarding-house keeper in an opinion from which we quote below:

BOARDING-HOUSE DEFINED.

"A boarding-house is not in common parlance, or in legal meaning, every private house where one or more boarders are kept occasionally only, and upon special considerations. But it is a *quasi* public house, where boarders are generally and habitually kept, and which is held out and known as a place of entertainment of that kind. I do not find that this precise question has ever before arisen, so as to require judicial determination. But upon a question quite analogous, it has been held, that a person who does not hold himself out as an inn-keeper, but who entertains travelers occasionally for pay, is not an inn-keeper, nor liable as such. (Citing *Lyons vs. Smith*, 1 Morris, 184). It is, I apprehend, within the observation, if not the experience of almost every one, that persons frequently board with friends, and relatives, and even strangers who are not supposed to keep boarding-houses. It is only the keepers of boarding-houses as

such, that come within this statute. A boarding-house is as well known, and as distinguishable from other houses in every city and village of the country as an inn or a tavern. It is a house where the business of keeping boarders generally is carried on and which is held out by the owner or keeper, as a place where boarders are kept.”¹

Referring to the act to prevent fraud and fraudulent practices upon, or by hotel keepers and inn-keepers (Chapter 677, Laws of 1867), the learned jurist further observes: “This shows plainly, as I think, the kind of house the legislature had in view. It was a sort of public house, partaking in some degree the character of an inn, or restaurant, but differing from either, where the business of entertaining persons for certain periods, and at fixed or agreed prices, was carried on. Certainly the legislature could not have intended that every private housekeeper, who might occasionally keep one or more boarders, but who did not make it a business, should put up copies of this act in the different rooms of his house, and be subject to the penalties prescribed in case of his neglect to do so.”

BOARDING-HOUSE AND INN DISTINGUISHED.

The difference between a boarding-house and a hotel or inn is thus stated by Johnson, J. : “The distinction between an inn and a boarding-house has been held to be, that in a boarding-house, the guest is under an express contract, at a certain rate for a certain period of time, while at an inn the guest being on his way, is entertained from day to day, according to his business, upon an implied contract. The inn-

1, Per Johnson, J., in *Cady vs. McDowell*, 1 Lansing. 485 ;

keeper is bound to receive every one who applies, if in a fit condition to be received, while the boarding-house keeper is not bound to receive any one, except upon special contract."¹ Mr. Schouler distinguishes the two establishments in his work on Bailments, as follows: "Inn-keepers, once more, should be distinguished from boarding-house keepers, who supply, it may be, the same lodgings and entertainment, but without the same publicity. An inn is a house whose keeper holds himself out as ready to receive all who choose to resort thither and pay an adequate price for the entertainment, while the keeper of a boarding-house reserves the choice of comers and the terms of accommodation, contracting specially with each customer and most commonly arranging for long periods and a definite abode. Closely as a large, modern boarding-house may resemble an inn in its management, there is yet to distinguish it an air of greater privacy rarefied still further by the lack of public title. A boarding-house or lodging-house keeper, pursuing the means of livelihood, is again discriminated from a private householder who may casually or upon special considerations, receive a boarder into the family."²

BOARDING-HOUSE KEEPER DEFINED.

"Who is a boarding-house keeper within the meaning of this act? Is it every housekeeper who in a single instance takes an individual to board for a limited time, by way of accommodation, though for compensation; or who occasionally takes one or more persons in that way and in no other, but who does not make it his regular business, or is it a person who

1, *Cady vs. McDowell*, 1 *Lansing*, 486;

2, *Schouler on Bailments*, p. 253 :

belongs to a well understood class of persons, which makes the keeping of boarders a business or calling, in whole or in part? I am clearly of the opinion that it is the latter class only, that the statute was designed to protect, or that comes within its terms and meaning."¹

The defendant was a housekeeper, and the keeper of a grocery, having kept house but a short time, and had never at any time taken any other boarders except plaintiff, and his four children. It appeared that plaintiff was the brother of defendant's wife, and requested defendant to let him come and live for a time, which request was granted; he went with his children and remained about six months. There was no arrangement made in regard to the time plaintiff was to remain, or as to the price of board, though it appears it was understood that compensation should be made. The defendant claimed the right to detain plaintiff's property and effects under an act of the Legislature of this State entitled, "An act for the protection of boarding-house keepers," passed April 16, 1860. It was held that defendant was not a boarding-house keeper within the meaning of the act and therefore could not detain the baggage of plaintiff.²

BOARDING-HOUSE KEEPER'S LIEN.

At common law a boarding-house keeper had no lien for compensation on the baggage of his boarder as we have observed. The Legislature of this State passed "an act for the protection of boarding-house keepers," chapter 446 of the laws of 1860, which was

1, Per Johnson, J., in *Cady vs. McDowell*, 1 Lansing, 485-6;

2, *Cady vs. McDowell*, *supra*;

amended by chapter 319 of the laws of 1876, and now reads :

“ The keeper of a boarding-house shall have the same lien upon and right to detain the baggage and effects of any boarder to the same extent and in the same manner as inn-keepers have such lien and right of detention ; but nothing herein shall be deemed to give any boarding-house keeper any lien upon or right to detain any property the title to which shall not be in said boarder.”

The wording of this act may seem ambiguous at the first reading, for at common law an inn-keeper has no lien for compensation on the effects of a mere boarder, and this statute gives a boarding-house keeper the same lien on the baggage and effects of a *boarder*, that inn-keepers have. It evidently means the same lien and right of detention as inn-keepers have upon the baggage and effects of guests.

PROPERTY OF THIRD PERSONS.

This statute as originally enacted was judicially construed by Barnard, J., in a case where the boarder brought certain property which did not belong to him to the boarding-house, and pretended that it was his own. The property in fact belonged to his mother, who brought action against the boarding-house keeper to recover it. The court therefore found for the plaintiff, but this was reversed on appeal. The judge said : “ The right of lien of the keeper of an inn is settled at common law, and is based upon sound reasons. He was compelled to receive the guest, and to pay for all property lost or stolen while the guest remained, and nothing excused him from this liability

but the act of God, or the public enemy. On account of this extraordinary liability, the law gave the inn-keeper a lien upon the goods of his guest, for the satisfaction of his reasonable charges. This lien extended to property brought by the guest and not owned by him. * * * If the defendant had been an inn-keeper, therefore, he would have been entitled to a lien on these goods in question, as against his guest; although in fact they did not belong to the guest but to a stranger.

“In construing statutes, courts will give effect to the intention of the legislature if the words are not repugnant to such construction. This is a remedied statute. It is for the relief of boarding-house keepers. Inn-keepers have no lien upon the property of a regular boarder. To restrict this statute so as to give only such lien as inn-keepers have against boarders is to destroy it. They have none. The Legislature intended to say, and I think have plainly said, such a lien as the common law gives to inn-keepers, as to their guests' goods, was to be given by legislative action to boarding-house keepers, as to the effects of their boarders.”¹

It will be observed that as originally enacted, this statute did not contain the clause which states that the boarding-house keeper shall have no lien on the property of a third person; as the statute now stands after the amendment, the doctrine of *Jones vs. Morrill* would not apply so as to give the right of detention of any property, the title to which is not in the boarder.

1. *Jones vs. Morrill*, 42 Barb., 626-7;

LIEN ON PROPERTY OF MARRIED WOMEN.

In a case decided in the Second Department in 1876, it appeared that plaintiff, a married woman, resided with, and was supported by her husband. Her separate property, such as wearing apparel, etc., was sought to be detained by defendant, a boarding-house keeper, by virtue of his right of lien. The court held that the statute of 1860, for the protection of boarding-house keepers, confers upon them no greater rights than were possessed by inn-keepers at common law, and that the common law did not, when the guest was received under a contract to furnish board for himself and wife, who accompanied him, give to an inn-keeper a lien upon her effects, brought on the premises by her, upon the faith of such contract, and no such right could be claimed by boarding-house keepers under the act, and that as her husband became liable for her board by special contract with the defendant, she incurred no liability, and as nothing was owing from her personally, the defendant had no right to detain her goods for the debt of the husband. The action was one of replevin, and the county court awarded plaintiff possession of her property with damages and costs, which was affirmed on appeal.

RIGHT OF ARRESTING BOARDERS.

Formerly, boarding-house keepers had no criminal remedy against a person who defrauded them out of their compensation. That privilege was alone enjoyed by inn-keepers; both the act to prevent frauds and fraudulent practices upon hotel keepers, and the Penal Code, excluding boarding-house keepers. By

1, *McIlvane vs. Hilton*, 7 Hun, 594;

chapter 645 of the laws of 1886, section 382 of the Penal Code was amended so that boarding-house keepers stand on an equal footing with inn-keepers in this respect. As the law now stands, any person who obtains food or accommodation at a boarding-house without paying therefor, or who obtains credit by the use of any false pretense, or who, after obtaining credit or accommodation, absconds and surreptitiously removes his baggage without paying for his food or accommodation, is guilty of a misdemeanor, and punishable accordingly. This is an important amendment to the criminal statutes, and was enacted for the benefit of boarding-house keepers.

DUTY TO REPORT SICKNESS AND DEATH.

Boarding-house keepers, and the keepers of lodging-houses in the city of New York are required, between the thirty-first day of May and the first day of November, in every year, to report in writing to the Mayor, Board of Health, or either of the health commissioners, the name of every sea-faring man, boarder or passenger by sea, who shall be sick in his house with fever, within twelve hours after each case of sickness shall have occurred. Every keeper of a boarding or lodging-house who shall refuse or neglect to perform such duty, shall be considered guilty of a misdemeanor, and on conviction shall be fined, for each offense, in a sum not exceeding two hundred and fifty dollars, or be imprisoned for a term not exceeding six months.¹

Every person keeping a hotel, or boarding-house or lodging-house in the city of New York shall report

1. N. Y. Rev. Statutes, 7th edition, Vol. II., p. 1072, 1074;

in writing to the public administrator the name of every person not a member of his family, who shall die in his or her house, within twelve hours after each death. Neglecting to comply with this provision is a misdemeanor, and upon conviction, is punishable by imprisonment in the penitentiary for a period not exceeding six months, or less than one month, or by a fine of one hundred dollars, one moiety of which shall be given to the informer, and the other moiety to be paid into the city treasury.

The public administrator shall cause a copy of this section to be left at every boarding or lodging-house in the city of New York, at least once in each year, and he shall be entitled to recover of any person the penalty prescribed, without due proof of service of a copy of that section, personally, on the defendant, previous to the neglect for which such suit may be brought, and within one year before the commencement of such suit.¹

EMIGRANT BOARDING-HOUSE REGULATIONS.

By the provisions of the Revised Statutes of this State, it is provided:

All persons keeping houses in any of the cities of this State, for the purpose of boarding emigrant passengers, shall be required to have a license for said purpose from the mayor of the city in which such houses are located, and such person so licensed shall pay to the said city the sum of ten dollars per annum, and shall give bonds satisfactory to said mayor, with one or more sureties, in the penal sum of five hundred dollars, for their good behavior and the proper conduct of all agents and runners in their employ,

1, N. Y. Rev. Statutes, 7th edition, Vol. III., p. 2317-18;

and said mayor is hereby authorized to revoke such license for cause. Every keeper of such boarding-house shall, under a penalty of fifty dollars, cause to be conspicuously posted in the public rooms of such house, in the English, German, Dutch, French and Welsh languages, and printed upon business cards to be kept for distribution, as hereinafter provided, a list of the rates of prices which will be charged emigrants per day and week for board and lodging, and also the rates for separate meals, which card shall contain the name of the keeper of such house, together with its number and the name of the street in which such house is situated. The keeper of such house shall also file a copy of said list in the city of New York in the office of the Commissioners of Emigration, and in each of the other cities of this state, with the mayor of said city, and with the agent of the Commissioners of Emigration, and the keeper of any emigrant boarding-house who shall neglect or refuse to post a list of rates, or to keep business cards so as above provided, or who shall charge or receive, or permit or suffer to be charged, or received for the use of such keeper, or for any other person, any greater sum than according to the rates of prices so posted and printed on business cards, and if any runner employed by any emigrant boarding-house keeper, or any emigrant boarding-house keeper himself, shall engage any emigrants as guests for such boarding-house, without delivering to every such emigrant a printed business card as above provided, he shall, upon conviction thereof, be deprived of his or her license, and be punished by a fine not less than fifty, nor more than one hundred dollars, to be recovered

in the city of New York by the Commissioners of Emigration, and in the other cities of this State by the mayors thereof, and any person who shall keep a boarding or lodging-house for emigrants within any of the cities of this State, who shall refuse or neglect to obtain a license in pursuance of the provisions of this section, shall, upon the first conviction forfeit the penalty of one hundred dollars, and upon a subsequent conviction, shall forfeit the penalty of two hundred dollars, to be recovered by the persons and in the manner above set forth.¹ [As amended by Laws of 1849, chapter 432.]

No keeper of any emigrant boarding-house shall have any lien upon the baggage or effects of any emigrant for boarding, lodging, storage, or any other account whatever, for any greater sum than shall be due from such emigrant for boarding and lodging according to the rates or prices so posted as above provided; and upon complaint being made upon oath before the mayor or any other public magistrate of the city in which such emigrant boarding-house is located, that the luggage or effects of any emigrant are detained by the keeper of any emigrant boarding-house, under pretence of any lien upon such luggage or effects, or on any claim or demand against the owner or owners thereof, for any other or greater sum than in accordance with such rates, it shall be the duty of the officer before whom such complaint is made, immediately to issue his warrant, directed to any constable or policeman of said city, commanding him or them to bring before him the party against whom such complaint has been made, and upon con-

1, N. Y. Revised Statutes, Vol. III., p. 2058.

viction thereof, the officer before whom such conviction shall be had, shall cause said goods to be forthwith returned to the owner thereof, and the party so convicted, shall be punished by a fine not less than fifty dollars, and not exceeding one hundred dollars, and shall be committed to the city prison until the said fine shall be paid, and until such luggage or effects shall be delivered to such emigrants. Any person so convicted shall have the right of appealing from the decision of such mayor or magistrate to the same tribunals and in the same manner as is provided by law for appeals from the decisions of justices in civil cases, and all the provisions of law relating to appeals from justices, shall apply so far as applicable to appeals from such mayor or other magistrate. But such appeal shall not authorize the detention of such luggage or effects after the payment of the sum which such mayor or magistrate shall adjudge to be honestly due from such emigrants.' [As amended by Laws of 1849, Chapter 321.]

SAILORS' BOARDING-HOUSES.

We shall now proceed to notice the statutory regulations respecting sailors' hotels and boarding-houses. These statutes are of no effect outside the cities of New York and Brooklyn.

By Chapter 184, Laws 1866, entitled "An act for the better protection of seamen in the port and harbor of New York," it is provided:

SECTION 1. It shall not be lawful for any person, except a pilot or public officer, to board, or attempt to board, a vessel arriving in the port or harbor of

1. N. Y. Revised Statutes, Vol. III., p. 2059;

New York, before such vessel shall have been made fast to the wharf, without first obtaining leave from the master or person having charge of such vessel, or leave in writing from her owners or agents.

SEC. 2. It shall not be lawful for any owner, master or other person having charge of any vessel arriving or being in the port of New York, to permit or authorize any sailors' hotel or boarding-house keeper not licensed as hereinafter provided, or any agent, runner or employee of any sailors' hotel or boarding-house keeper to board or attempt to board any vessel arriving in or lying, or being in the harbor or port of New York, before such vessel shall have been made fast to the wharf or anchored, with intent to invite, ask or solicit the boarding of any of the crew employed on such vessel.

SEC. 3. It shall not be lawful for any sailors' hotel or sailors' boarding-house keeper, or the employees of any sailors' hotel or sailors' boarding-house keeper, to engage in the business of shipping seamen for any vessel, nor for any such person having boarded any vessel made fast to any wharf in the port of New York, to neglect or refuse to leave said vessel after having been ordered to do so by the master or person having charge of such vessel. [As amended by Laws of 1877, Chapter 434.]

SEC. 4. It shall not be lawful for any person to keep, conduct or carry on, either as owner, proprietor, agent or otherwise, any sailors' boarding-house or sailors' hotel in the city of New York or city of Brooklyn without having the license in this act provided.

SEC. 5. It shall not be lawful for any person not having the license in this act provided, or not being

the regular agent, runner or employee of a person having such license, to invite, ask or solicit, in the city or harbor of New York or city of Brooklyn, the boarding or lodging of any of the crew employed on any vessel.

SEC. 6. There shall be, and is hereby created, a board denominated a board of commissioners for licensing sailors' hotels or boarding-houses in the cities of New York and Brooklyn, consisting of one person, to be selected by each of the following corporate bodies or associations respectively, to-wit: The Chamber of Commerce of the State of New York; the American Seamen's Friend Society in New York; The New York Board of Underwriters; The Marine Society of New York; the Society for Promoting the Gospel among Seamen in the Port of New York, and the Shipowners' Association of the State of New York. [As amended by Laws of 1877, Chapter 434.]

SEC. 7. Such board shall organize for the transaction of business as soon as practicable after the passage of this act. They shall take the application of any person applying for a license to keep a sailors' boarding-house, or sailors' hotel in the city of New York, and upon satisfactory evidence to them of the respectability and competency of such applicant, and of the suitableness of his accommodations, shall issue to him a license, which shall be good for one year, unless sooner revoked by said board, to keep a sailors' boarding-house in the city of New York or Brooklyn, and to invite or solicit boarders for the same.

SEC. 8. Such board may, upon satisfactory evidence of the disorderly character of any sailors' hotel or boarding-house, licensed as hereinbefore provided,

or of the keeper or proprietor of any such house, or of any force, fraud, deceit or misrepresentation in inviting or soliciting boarders or lodgers for such house, on the part of such keeper or proprietor, or of any of his agents, runners or employees, or of any attempt to persuade or entice any of the crew to desert from any vessel in the harbor of New York, by such keeper or proprietor, or any of his agents, runners or employees, revoke the license for keeping such house.

SEC. 9. Every person receiving the license hereinbefore provided for, shall pay to the board of commissioners aforesaid, the sum of twenty dollars, which after deducting the actual expenses of said board incurred in the transaction of the business, which expenses shall not exceed the sum of fifteen hundred dollars, shall be by them applied for the relief of shipwrecked and destitute seamen. Said board shall file on the second Monday of January of each year, in the office of the clerk of the city and county of New York, a statement showing the number of licenses issued, the names of persons to whom issued, with name and number of the street of house licensed during the year preceding, the amount of money received therefor, the amount and items of their disbursements, and the amount distributed by them as hereinbefore directed.

SEC. 10. The said board shall appoint a president and secretary, and shall keep an office in the city of New York, and make such by-laws and regulations as may be needful for the orderly conduct of its business, not inconsistent with the constitution and laws of this State.

SEC. 11. The said board shall furnish to each sailors' hotel or boarding-house keeper licensed by them as aforesaid, one or more badges or shields, on which shall be printed or engraved the name of such hotel or boarding-house keeper, and the number and street of his hotel or boarding-house; and which said badges or shields shall be surrendered to said board upon the revocation by them or expiration of any license granted by them as hereinbefore provided.

SEC. 12. Every sailors' hotel or boarding-house keeper, and every agent, runner or employee of such hotel or boarding-house, when boarding any vessel in the harbor of New York, or when inviting or soliciting the boarding or lodging of any seaman, sailor or person employed on any vessel, shall wear conspicuously displayed the shield or badge referred to in the foregoing section.

SEC. 13. It shall not be lawful for any person except those named in the preceding section, to have, wear, exhibit or display any such shield or badge to any of the crew employed on any vessel with the intent to invite, ask or solicit the boarding or lodging of any of the crew employed in any vessel being in the harbor of New York.

SEC. 14. Whoever shall offend against any or either of the provisions contained in sections one, two, three, four, five, twelve and thirteen, in this act, and any commissioner appointed under this act, who shall directly or indirectly receive any gratuity or reward, other than is herein provided for, or on account of any license under this act, shall be deemed guilty of a misdemeanor, and shall upon conviction thereof, be punished by imprisonment in a county jail for a term

not exceeding one year, and not less than thirty days, or by a fine not exceeding two hundred and fifty dollars, and not less than one hundred dollars, or by both such fine and imprisonment.

SEC. 15. The word "vessel" as used in this act, shall include vessels propelled by steam.

THE BOARDING-HOUSE KEEPER'S LIABILITY.

In a case arising in England it appeared that plaintiff, an inmate of defendant's boarding-house, suffered a loss of certain articles from his room, which were stolen by a thief who entered through a door which defendant's servant had left open. It further appeared that defendant knew that this servant often left doors open. The trial judge charged the jury that a boarding-house keeper was bound to take due and reasonable care, such as a prudent house keeper would take in the management of his own house for the protection of his own goods. He further laid down that a boarding-house keeper was not liable for negligence of a servant, unless it was shown that he had been guilty of some neglect himself, as in keeping a negligent servant with a knowledge of his habits. The jury found for defendant, and a new trial was asked. The court gave an opinion that a boarding-house keeper is not bound the same as an inn-keeper to safely keep the baggage of a boarder, but that the law implies a liability to take due and proper care of a boarder's property, and neglecting to take proper charge of an outer door might be a breach of duty.¹ A later case decided that a lodging-house keeper was under no legal obligation to take care of the goods of a boarder. One of the judges held that even if things stolen from a lodger's room

1. *Dansey vs. Richardson*, 3 El. & Bl., 144 ;

had been taken by a member of the lodging-house keeper's own family, he would not be liable.¹ The rule of this last case has, however, been modified in New York State, where it was held that a boarding-house keeper is responsible for the negligence of his servants in the care of a boarder's property, and accordingly when the housekeeper allowed a stranger to go into a boarder's room, where he stole property of the boarder, it was held that the boarding-house keeper was liable for the loss.² In this case in the opinion of Loew, J., he remarked: "The only question, therefore, presented for our consideration and determination in this case is, whether a boarding-house keeper is liable for loss of his guests' goods occasioned through the negligence of his own servants while acting within the scope of their employment." After referring to the cases we have cited, he continued: "Now, it seems to me that a distinction may be made as regards liability between a boarding-house keeper and one who merely lets his lodging. Assuming, however, that Erle, J., is correct when he says in *Dansey vs. Richardson*, (*supra*,) that the same reasoning will apply equally to each, I am of opinion, after much consideration, that the rule of law as laid down by the court in the last named case, is the better and more correct one. Nearly every objection which can be urged against charging a boarding-house keeper for the loss of his goods, will upon reflection be found to apply with equal force to an inn-keeper, yet the latter is deemed an insurer of the property of his guests, and is bound to make good any loss with some exceptions. (*Hulett vs.*

1, *Holder vs. Soulby*, 8 C. B. N. S., 254;

2, *Smith vs. Read*, 6 Daly, 33;

Swift, 33 N. Y., 57). It may be said that because of this extraordinary liability, the law to some extent recompenses him by giving him a lien upon the goods of his guest, by which he can enforce a summary payment of his reasonable charges. But, in this State, a boarding-house keeper now has, by statute, all the rights and remedies in respect of the baggage and effects of his guest that an inn-keeper possesses. In *Ingalsbee vs. Wood* (36 Barb., 452), the court, speaking of the inn-keeper's lien, says: "'The lien and liability must stand or fall together.' The material question then is, shall the boarding-house keeper have the inn-keeper's lien, without incurring any of his liability? Shall he possess all the inn-keeper's rights and advantages without any correlative duty on his part? I apprehend not. When the boarding-house keeper receives a boarder into his house, he also receives as incident to it, his baggage and effects, and he ordinarily makes arrangements with reference thereto just as much as the inn-keeper does with reference to the goods of his guest. In both cases this is done for hire and reward, and it can make no difference that in the one case the compensation is included in the contract made with the boarding-house keeper, while in the other it is embraced within the reasonable charges which the inn-keeper is authorized to make. Again, the boarding-house keeper usually has the custody and control of the property belonging to his boarders, fully as much as the inn-keeper has the care and keeping of that belonging to his guests. The boarding-house keeper, moreover, may be said to have the advantage of the inn-keeper, in that he may at his option, refuse to take an applicant for board whose appearance or references may

not be satisfactory; whereas, the inn-keeper is obliged to receive and entertain all who come, unless he has a lawful excuse for refusing to do so. In view of all this, it is, as Coleridge, J., very properly remarks in *Dansey vs. Richardson*, difficult to see why, on principle merely, the boarding-house keeper should not be required to take at least as much care of the goods of a guest as the inn-keeper. * * I do not, however, by any means, wish to be understood as favoring the idea that a boarding-house keeper should be held to the same degree of care, in respect to the goods of a boarder, that is exacted from an inn-keeper. All that I contend for is that he should be required to exercise due and reasonable care, such as a provident person would instinctively bestow on his own property." After referring to *Ingalsbee vs. Wood*, (*supra*), and to *Buddenberger vs. Benner* (1 Hilton, 84), he concludes that, "Both upon principle and authority, a boarding-house keeper should be held to the exercise of ordinary and reasonable care in respect of his boarder's goods."

Since the above opinion was delivered, the Legislature has gone a step further, and has given the boarding-house keeper the right of arresting a boarder. The tendency of all this legislation has been to advance the boarding-house upon the same legal ground as a hotel, conferring on the keeper of the one establishment the same rights and privileges as are enjoyed by the other. It is an interesting question whether the last change in the law, giving the boarding-house keeper the right of arrest, has not increased his liabilities and duties, and whether his liability is not to be adjudged even greater than was laid down by Judge Loew.

CHAPTER XI.

SLEEPING CARS.

The liability of the owners or lessees of sleeping cars for the loss of the property of a passenger occupying a berth in a vehicle provided for the express purpose of furnishing lodgings to travelers would seem to be properly within the scope of this work.

SLEEPING CAR IS NOT AN INN.

It *seems* to be well settled law that the owners of sleeping cars, who charge for sleeping accommodations upon their cars for a particular trip, are not liable as inn-keepers for the loss of the money or property of such passengers, and as they merely provide sleeping accommodations for travelers who have already paid the railroad company, over whose lines these cars are run, for their transportation, and receive no part of the fare paid for such transportation, they are not common carriers, and not liable as such for property lost or stolen from the cars, without the negligence of their servants or employees.¹ In a case arising in Illinois, the court held that a sleeping car is not a common inn, it does not accommodate persons indiscriminately, does not furnish victuals and lodging, but only lodging, affords no accommodation but a berth and bed, and a place and convenience for

1, See Rogers' Law of Hotel Life, 77 ;

toilet purposes, does not receive pay for carrying nor undertake to care for the goods of travelers, but the accommodation afforded is one arising from an express contract, and the liabilities of inn-keepers should not be extended to them.¹

In a case which arose in the Supreme Court of Kentucky, the court said: "It would be difficult to give any valid reason why a sleeping car company should be held to any more rigid liability in such cases than a steamboat company. It could no more be said that a sleeping car was an 'inn on wheels' than that a steamboat was an inn on water. They both provide sleeping apartments for passengers who pay for the privilege, and are expected to occupy them. Sleep is as essential to the health and comfort of the traveler in the one case as in the other. The servants of the steamboat company certainly have the implied custody of the passengers' wearing apparel to as great an extent as the servants of the sleeping car company. The resemblance of a steamboat to an inn is even greater than that of a sleeping car, since it is customary for the former to provide meals for its passengers. If, then, the rigid liability of inn-keepers is not to be extended to the owners of steamboats, common justice demands that it be not applied to the owners of sleeping cars."² This case seems to have been decided on the authority of the case of *Steamboat Crystal vs. Vanderpool*, 16 B. Mon., (Ky.,) 307, where a passenger on an Ohio steamboat was robbed

- 1, Pullman Palace Car Co. vs. Smith, 73 Illinois, 360; See also to same effect, *Welding vs. Wagner*, 1 Rob. C. C., 66; *Pullman Palace Car Co. vs. Gardner*, 14 W. N. C., 17;
- 2, Pullman Palace Car Co. vs. Gaylord, 6 Ky. Law Rep., 279;

in the night time of a watch, money and some jewelry, there being no lock on the door of his state-room that could be secured. The court held that he was not entitled to recover.¹ In an able article on the Responsibility of the Pullman Palace Car Company in the *American Law Review*, Mr. S. B. Torey of Louisville, Kentucky, has endeavored to show that the owners of sleeping cars have no responsibility for the valuables and baggage of passengers, which are not expressly delivered to them. He bases his arguments on the theory that in order to constitute a bailment there must be a delivery of goods to the bailee, and that as passengers retain possession of their own property on board the sleeping coaches the contract of bailment is never created. He ingeniously suggests that sleeping cars were not intended to supersede express cars where the property of a passenger can be transported for a price adequate to the risks incurred, and that no contract of guardianship over the person or property of the passengers is assumed by the sleeping car company. The writer evidently labored under a misapprehension of the law of innkeepers, for he strangely asserts the civil law doctrine of *fatale damnum*, which, as we have already observed, does not prevail at the present time, although there is a conflict of decisions on the point. We shall subsequently notice a number of apparently well considered cases which seem to be at variance with some of the views expressed by Mr. Torey.

LOSS OF PROPERTY BY NEGLIGENCE.

The general rule would seem to be that whenever

1, 19 *American Law Review*, 204 ; See also *Cohen vs. Frost*,
2 *Duer*, 335 ;

the property of a passenger is lost by negligence of the sleeping car company or its agents, then the company is liable for the loss. If, however, no direct negligence can be imputed to the company, the traveler must bear the loss himself.

The Superior Court of Buffalo seemed to consider sleeping car companies as common carriers of passengers, inasmuch as it was held that a traveler who took accommodations in a palace or sleeping car, belonging to a company separate from the railroad company by which the train is run, and who retained in his own possession articles of apparel, cannot hold the sleeping car company to any stricter liability than he could the railroad company, and that the liability of palace and sleeping cars was no greater than that of *any other carrier of passengers*, and was not as strict as that of inn-keepers.¹ This was an action to recover for plaintiff's overcoat lost in some unknown manner from his berth during the night, and the court decided he was not entitled to recover.

In a later case this decision was commented upon. The case was in the City Court of New York, and tried before a referee who found that plaintiff, a passenger in defendant's sleeping car, on retiring at night, put his money, valuables and watch in his waistcoat, rolled it up and put it under the inside pillow of his berth. In the morning the wallet containing money and valuables was gone, the cause of the disappearance being a matter of conjecture. In his report the referee stated as follows: "That this defendant owes duties to those whom it carries is certain.

1, Welch vs. Pullman Co., 16 Abb. Pr., 352; s.c. 1 Sheldon, (Buffalo,) 457 ;

What those duties are, it will, I think, be found impossible distinctly to define under a general rule which shall be applicable to all cases. It seems to be well settled in principle and the plaintiff himself considers that such duties are not those which appertain to inn-keepers or common carriers. The defendant, if liable, must be held so upon the ground that it failed to perform its duties towards the plaintiff, and acted negligently on his behalf, thereby causing him loss and damage. Now, it clearly appears in this case that there is no evidence of any act of omission on the part of the defendant. So far as appears the car in which the plaintiff had his berth was cared for in the usual way, and no fault therewith was found by plaintiff; and it as clearly appears that there is no evidence in the case of any wrongful act on the part of defendant. Persons unknown to each other and to the company are expected to be admitted into these cars. The fact that there was one person in the car whom the plaintiff considered of suspicious appearance, can hardly be considered an act of negligence on the part of the company. The passing of persons through the car in the morning did not necessarily show, as the plaintiff inferred, that the doors of the car were open, for such passing may well have been confined to the inmates of the car, and the muttering of the porter when the conductor asked him if he had been asleep does not establish that sleep had overtaken him. * * *

“While it may be conceded that these sleeping car companies owe greater duties to their customers than ordinary railway carriers of passengers, still they can only be held liable for property lost while under the

control of the passenger upon proof of some fault on their part, and that from the mere fact of such loss unaccompanied by any other proof no presumption of negligence arises."¹

ROBBERY IN SLEEPING CARS.

The losses happening by robbery upon sleeping cars are of frequent occurrence, and often give rise to the consideration of the question of how far the company is liable for such loss, if at all. The better considered cases seem to hold that if the robbery occurred by reason of the negligence of the company or its servants, the company would be held liable, otherwise the passenger must suffer the loss himself. In a recent case, Tracy, J., observed: "If the porter of a sleeping car, employed to guard the car in which the passengers sleep, should himself fall asleep, or, abandoning his post, allow a pickpocket to enter and rob the passengers, the company would be liable; but if the guardian should himself turn pickpocket, and rifle the pockets of the passengers, the company would not be responsible for his acts. The carrier selects his own servants and agents, and, we think, he must be held to warrant that they are trustworthy as well as skillful and competent."² In Massachusetts it was held that a sleeping car company is bound to use reasonable care to guard a passenger in its cars from theft, and if, through want of such care, the personal effects of a passenger, such as he might reasonably carry with him, are stolen while the porter is asleep, the company is liable.³

1, Tracy vs. Pullman Co., 67 How. Pr., 154;

2, Stewart vs. Brooklyn & Crosstown R. R. Co., 90 N. Y., 593;

3, Lewis vs. N. Y. C. Sleeping Car Co., Vol. 9, N. E. Reporter, p. 615;

The Marine Court of New York considered the liability of sleeping car companies for loss of general baggage of a passenger by theft, while the passenger was asleep, in one of the company's cars. The court held that the company were not insurers, inn-keepers nor transporters. The judge said that in the ordinary railway cars a passenger may sleep, but at his own risk; he is the custodian of the property retained in his possession, and he must look out for it. But when he gets into a sleeping car, and pays for sleeping, the passenger is not expected to keep awake to take care of himself and his property. The company has a conductor and a porter to watch during the night, and they were bound to use due diligence in keeping away disturbers. Sleeping-car companies undertake to do that which the railroad companies find it injudicious to attempt. The judge further said that he based his decision solely on the ground that the sleeping car company are not insurers, but are, by reasonable watch, to protect a passenger in his person and in his property about his person, during sleep.'

SLEEPING CAR DISTINGUISHED FROM INN.

An interesting case of robbery upon sleeping cars which has never been reported, was tried at the Oswego Circuit, in 1884, before Justice Vann and a jury, and resulted in a nonsuit for the plaintiff. The plaintiff, Dr. Daniel Pardee, brought action against the treasurer of the New York Central Sleeping Car Company to recover the sum of eighty dollars alleged to have been stolen from his berth while a passenger upon a sleeping car running between Syracuse and

Albany. The plaintiff alleged in his complaint that the defendant kept and maintained on board the cars, inns or hotels, and furnished their travelers or guests with berths and sleeping accommodations, for which they asked and received pay, and that the plaintiff entered one of these cars, and paid for his berth and sleeping accommodations, retired for the night and went to sleep. That while so occupying said berth, and without his fault or negligence, but by the carelessness and negligence of the defendant in not furnishing a suitable and safe place to deposit and carry the money and property of its travelers and guests, and in not supplying said sleeping cars with suitable, competent and trusty servants, and by the careless, negligent and wilful acts of defendant's employes, the sum of eighty dollars, carried by plaintiff to defray his necessary traveling expenses, was taken from him. It appeared from the evidence that plaintiff gave the porter his vest containing his pocket-book and money to keep until morning. In a short time the conductor brought back the property and put it under his pillow, telling him there was no place to keep it in the car, and he must take care of it himself. In the morning the money was found to have been stolen. In deciding the motion for a nonsuit the judge said: "The obligation which a sleeping car company owes to its passengers never impressed me as strongly resembling the obligation which a common carrier of passengers owes to those who patronize him. It more clearly resembles the duties of an inn-keeper, but differs essentially from those. It differs very essentially from the duties of a common carrier of goods, because in that case the goods are entrusted

to the exclusive custody of the common carrier; whereas, in the case of a sleeping car company they are retained in the possession of the passenger. I do not think that the argument that there is no lien on the goods of the passenger has much force, however; there is no opportunity for a lien to occur, as the invariable habit of those companies is to exact payment in advance. Ever since the decision of Judge Nelson in the *Tower* case, reported in the 7th of Hill, it seems to have been regarded as settled that a common carrier of passengers cannot be held liable for the loss of the goods that a passenger retains in his own possession, and which are not checked or entrusted to the exclusive custody of the common carrier itself. It would lead to very harsh results if a sleeping car company was held to the absolute liability of inn-keepers. The nature of a sleeping car differs so essentially from the nature of an inn, and the divisions between the berths differ so from the divisions between the rooms, and the means of securing the rooms by means of locks, as compared with simply a curtain that can be brushed away by the hand of a child, that a comparison between them does not lead to any valuable result. The facts do not resemble each other enough. The sleeping car company undoubtedly owes to its passengers certain duties. Among those duties would be—I simply state it for the sake of illustration—after the passengers have retired and gone to sleep, of keeping the door locked and keeping intruders out; to see that no one comes in who is not a passenger and has a right to be there; providing a vigilant and efficient porter who would keep awake and use reasonable diligence in looking

after passengers and their goods after they are asleep ; to see that no suspicious or unauthorized person enters the car or commits open depredations therein ; and within the limits of reasonable diligence, to see that no passenger preys upon a fellow passenger. That the company must see to it at all events that the goods of a passenger upon a sleeping car are not lost, it seems to me cannot be the law.

“The point has been made here that these goods were actually placed in the hands of the porter. Dr. Pardee handed the porter his vest, containing the book with \$115 in money, and the book and vest were subsequently returned to him by the conductor ; and whether or not the money was there, or any more of it was there than the doctor found in the morning, is claimed to be a question of fact to be submitted to the jury. That depends upon whether or not either the porter or the conductor received that money in the line of his duty, so that his acts would be binding upon the defendant. Perhaps it might be illustrated by this : Suppose that riding in an ordinary passenger car, I hand its conductor my watch, and ask him to take care of it. That contract is a personal contract with the conductor, and in no wise binds the company he represents. It is not in the line of his ordinary duties. He has no right to make such a contract for the corporation or the company which he represents. By parity of reasoning it seems to me that neither the porter nor the sleeping car conductor has any right on behalf of his principal, to take charge of the goods of the passenger, because the company that they represent is not a carrier of goods, except as incidental to the convenience of pas-

sengers; nor are they carriers of passengers. They simply provide certain conveniences for passengers carried by another carrier, so that the difficulties and hardships of travel may be ameliorated to a certain extent.

"I should be glad to follow any authority that allowed me, in the interest of the public, to hold sleeping car companies to a stricter liability than such corporations have yet been held subject to; but there is no authority that permits me to do it, and the weight of authority, it seems to me, is in the other direction. But I doubt whether in any event I should want to hold, if there were authorities that authorized me to, that from the simple fact that this money was presumptively in the possession of the doctor when he got into his berth and went to sleep that night, after the vest had been returned to him, and eighty dollars of it was gone in the morning, that that proof alone would charge the defendant with liability. I think this would be an unjust and unreasonable result. It seems to me that such a result would be disastrous, and instead of being in the interest of the public, would ultimately destroy any sleeping car company in existence. There would be no possible means for them to protect themselves against fraud. Any person who saw fit to represent the next morning that he had been robbed the night before; that he had had a certain sum of money—not too much, so it would be an unreasonable sum to carry as a passenger—and that he lost it during the night, would place the sleeping car company at the mercy of the jury or tribunal which decided the question of fact. Without

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elaborating my views, I think this motion should be granted."

The counsel for plaintiff asked the court to hold that it was negligence on the part of defendants in not providing a proper place to care for the valuables of their guests; but the court declined to hold such a doctrine, stating that that was for the legislature to provide.¹

In charging a jury in the United States Court, District Judge Brown made the following distinctions between sleeping cars and inns:

"There are good reasons for not extending such liability (the liability of inn-keepers) to the proprietor of a sleeping car:

"1. The peculiar construction of sleeping cars is such as to render it almost impossible for the company, even with the most careful watch, to protect the occupants of berths from being plundered by the occupants of adjoining sections. All the berths open upon a common aisle, and are secured only by a curtain, behind which a hand may be slipped from an adjoining or lower berth, with scarcely a possibility of detection.

"2. As a compensation for his extraordinary liability, the inn-keeper has a lien upon the goods of his guests for the price of their entertainment. I know of no instance where the proprietor of a sleeping car has ever asserted such a lien, and it is presumed that none such exist. The fact that he is paid in advance does not weaken the argument, as inn-keepers are also entitled to prepayment.

1, NOTE—An appeal has been taken from this decision and is pending in the General Term, but has not been brought on for argument.

"3. The inn-keeper is obliged to receive any guest who applies for entertainment. The sleeping car receives only first-class passengers traveling upon that particular road, and it has not yet been decided that it is bound to receive those.

"4. The inn-keeper is obliged to furnish food as well as lodging and to receive and care for the goods of his guests. The sleeping car furnishes a bed only, and that, too, usually for a single night. It furnishes no food and receives no baggage in the ordinary sense of the term. The conveniences of the toilet are simply an incident to the lodging.

"5. The conveniences of a public inn are an imperative necessity to the traveler, who must otherwise depend on private hospitality for his accommodation, notoriously an uncertain reliance. The traveler by rail however is under no obligation to take a sleeping car. The railway offers him an ordinary coach and cares for his goods and effects in a van especially provided for that purpose.

"6. The inn-keeper may exclude from his house everyone but his own servant and guest. The sleeping car is obliged to admit the employees of the train to collect fares and control its movements.

"7. The sleeping car cannot even protect its guests, for the conductor of the train has a right to put them off for non-payment of fare or violation of its rules or regulations."

UNAUTHORIZED ACTS OF SERVANTS.

A principal is only liable for the acts of his servants or agents when they are done in the course of the employment in which they are engaged. Accordingly

1, *Blum vs. Southern Pullman Co.*, 1 *Flippin*, (U. S.) 500 ;

where the porter of defendant threw out a bundle containing his own soiled clothing for the purpose of having it washed, and plaintiff, a track hand at work near by, was struck by the bundle and injured, it was held that he could not maintain an action against the sleeping car company by which the porter was employed. The court held that a corporation owning a parlor car in use on a railroad, under an agreement between it and the railway corporation, is not liable for an injury caused a person not a passenger by the porter, while doing something not in the course of his employment, as servant of the defendant.¹

RAILWAY COMPANIES LIABLE TO SLEEPING CAR PASSENGERS.

The sleeping car is a modern innovation in traveling, and as such vehicles are usually owned by a corporation entirely independent of the railway company which owns the tracks over which they are run, there has been considerable difference of opinion as to which company is liable for any losses or injuries to passengers in sleeping or palace cars. As sleeping coaches were used in this country long before their introduction into England, we cannot, as in the case of inns, seek for instruction in the common law of the mother country. We must depend upon the decisions of our own courts, and, as the invention of such coaches is so recent, the law can hardly be said to be firmly established.

In a leading text book it is stated that: "It is a matter of common knowledge, that these cars are

1, *Walton vs. N. Y. C. Sleeping Car Co.*, 139 Mass., 556, 21 Am. & English R. R. Cas., 600, note;

run by a corporation entirely distinct from the railway corporation over whose roads they run, and therefore they are not open to any passenger upon the train but only to such as pay the requisite extra compensation therefor and are accepted by such company. These corporations, standing alone, cannot be said to be common carriers in any sense, or subject to the rules applicable to common carriers. They do not 'carry' the passengers, or undertake to do so, nor do they become responsible for their safe carriage, beyond the implied guaranty that their cars are sound, safe, and roadworthy, which is an implied obligation arising from their contract, which applies to any person or corporation who lets a vehicle for hire. It is held, and with great propriety, that the liability of the railway company for the safe carriage of a passenger in one of these cars remains unchanged; that by accepting and adopting these cars as a part of its train, it is responsible for any defects therein, and a passenger who is injured by reason of their defective condition may have his remedy against either or both corporations. The palace car company merely furnishes the car and says to the traveling public that upon the payment of the sum charged for seats therein, we will furnish you with accommodations which you cannot obtain on the regular trains, to wit, roomy and comfortable chairs by day, and a bed at night, with toilet arrangements, etc. It simply contracts to furnish these attractive and additional accommodations during the trip. It does not undertake to carry the passenger, nor does it hold itself out as having any authority or control over the train or its passage over the rails. No one understands, or has any right to

understand when he takes passage in one of these cars, that the company running it becomes obligated to take him to his point of destination safely, except in so far as the roadworthiness, etc., of its own cars is concerned, or to land him there upon schedule time. But while strictly they are not common carriers of passengers, yet, owing to their peculiar relation to the public and the railway company, they owe certain duties to the public which they cannot evade or shirk. They invite the public to ride in their cars, and by receiving the extra compensation therefor, they impliedly contract that their cars are safe and roadworthy and that they will at least exercise ordinary care to protect both the passenger *and his property* which he may have in his custody. It is quite true that a passenger upon an ordinary railway car, takes the risk of the loss of any personal baggage or effects which he may take with him into the car; and while he may sleep if he can, yet he does so at his peril; and if while sleeping, thieves rob him of his money or baggage, the loss is his own, because the railway company has not contracted either expressly or impliedly to keep watch over his goods, either while he is asleep or awake; but in sleeping cars a very different condition of things exists, and the very object and purpose of the cars, and the inducement which the company holds out to the public for taking passage in them is, that passengers may sleep."¹

Another text writer lays down the rule that railways are liable for injuries received by passengers in sleeping cars, though the cars are owned and manned by an independent corporation with which passengers

1, Wood's Railway Law, Vol. III., p. 1446;

have specifically contracted to ride in such cars.¹ There are numerous cases in which this doctrine has received the sanction of judicial tribunals. In Massachusetts it was held that if a person who has made a contract with a railway corporation for his personal transportation from one place to another, takes a seat in a sleeping car and there loses an article of personal baggage through the negligence of a person in charge of the car, and without fault on his part, it is no defence to an action against the railway corporation that the car was not owned by the defendant, but by a third person, who by contract with defendant, provided conductors and servants, in absence of knowledge of plaintiff of such state of facts.² A passenger by the train of a railway company, traveling in the coach of a sleeping car company, may properly assume, in the absence of notice to the contrary, that the whole train is under one management; and in such case, when he sustains his injury by the negligence of one employed by the sleeping car company, he may maintain his action against the railway company. On proof of injury to a passenger by the fall of a sleeping car berth without his fault, in absence of other proof, a presumption arises that the railway company is liable. The court did not determine what the effect of such a notice would be.³ In a New York case it was decided that passengers upon a railroad, taking a drawing-room car, have a right to assume that they are under a contract with the railway corporation, and that the servants in charge of

1, Patterson's Railway Accident Law, 244;

2, Kingsley vs. L. S. & M. S. R. R. Co., 125 Mass., 54;

3, C. C. C. & I. Railroad Co. vs. Walrath, 38 Ohio State, 461, 8 Am. & Eng. R. R. Cas., 37;

the car are its servants, for whose acts in the discharge of their duty it is liable.¹ In this case Judge Andrews, of the Court of Appeals, said : " The business of running drawing-room cars in connection with ordinary passenger cars, has become one of the common incidents of passenger traffic on the leading railroads of the country. These cars are mingled with the other cars of the company, and are open to all who desire to enter them, and who are willing to pay a sum in addition to the ordinary fare, for the special accommodation afforded by them. They are put on presumably in the interest of the road. They form a part of the train, and the manner of conducting the business is an invitation by the company to the public to use them, upon the condition of paying the extra compensation charged. Passengers cannot know what private or special arrangement, if any, exists between the company and third persons, under which this part of the business is conducted, and they have, we think, in taking one of these cars, a right to assume that they are there under a contract with the company, and that the servants in charge of the drawing-room cars are its servants. Otherwise there would be two separate contracts, in the case of each passenger in these cars, one with the company, and one with Wagner. Such a condition of things would involve a confusion of rights and obligations, and divide a responsibility which ought to be single and definite. Take the case of a passenger in a drawing-room car who should be burned by the negligent upsetting or breaking of a lamp by a porter, or the case of a passenger in a sleeping car injured by the por-

1, Thorp vs. N. Y. C. & H. R. R. Co., 76 N. Y., 402;

ter's negligence. Is the passenger, in these or other similar cases which might be supposed, to be turned over, for his remedy, against Wagner, on the ground that the servant who caused the injury was his servant and not the defendant's? The public interest, the due protection to the rights of passengers, require that the railroad company which is exercising the franchise of operating the road for the carriage of passengers, should be charged with and responsible for the management of the train, and that the persons employed therein should, as to passengers, be deemed the servants of the corporation." This principle is aptly illustrated by a remark of Van Hosen, J., who said: "We know nothing of the arrangements between the defendant and the Wagner Car Company, but as no one without leave of the defendant can run cars upon its track, we must assume that the drawing-room cars are run for the benefit of the defendant."¹

IMMATERIAL WHAT CAR PASSENGER OCCUPIES.

If a passenger buy a ticket entitling him to ride in a certain section of a certain car, and he happens to be in another section, or in another car, at the time of an accident, occurring through the negligence of the corporation, his not being in the section or car in which his ticket entitles him to ride is no defence. In a case in the United States Supreme Court it appeared that plaintiff purchased a first-class ticket of the defendant for passage over its line, and at the same time, purchased a sleeping car ticket of the Pullman Palace Car Company, for the same route, paying an additional sum for such ticket. He took the

1, *Ulrich vs. N. Y. C. R. R. Co.*, 31 Alb. L. J., 302;

train the same day; the next morning, at invitation of a friend, he entered another sleeping car on the same train, to engage in conversation; while so engaged the upper berth of the section in which they were sitting fell down, and was replaced by the porter, who assured them it would not fall again. Shortly afterwards the berth again fell, striking plaintiff on the head, causing cerebral injuries, incapacitating him from labor, and rendering medical attendance necessary. The court held the railway company liable, and also held that the fact that plaintiff was in another car than the one for which he purchased his ticket was immaterial, and made no difference as to the company's liability. Harlan, J., said: "The duty of the railroad company was to convey the passenger over its line. In performing that duty, it could not, considerately with the law and obligations arising out of the nature of its business, use cars or vehicles whose inadequacy or insufficiency for safe conveyance was discoverable upon the most careful and thorough examination. If it choose to make no such examination, or cause it to be made; if it elected to reserve or exercise no such control or right of inspection, from time to time, of the sleeping cars which it used in conveying passengers, as it should exercise over its own cars, it was chargeable with negligence or failure of duty. The law will conclusively presume that the conductor and porter, assigned by the Pullman Palace Car Company to the control of the interior arrangements of the sleeping car in which Roy was riding, when injured, exercised such control with the assent of the railroad company. For the purposes of the contract under which the railroad company under-

took to carry Roy over its line, and, in view of its obligation to use only cars that were adequate for safe conveyance, the sleeping car company, its conductors and porter, were, in law, the servants and employees of the railroad company. Their negligence, or the negligence of either of them, as to any matters involving the safety or security of passengers while being conveyed, was the negligence of the railroad company. The law will not permit a railroad company, engaged in the business of carrying persons for hire, through any device or arrangement with a sleeping car company whose cars are used by the railroad company, and constitute a part of its train, to evade the duty of providing proper means for safe conveyance of those whom it has agreed to convey."¹

NOTICE TO PASSENGERS OF SEPARATE CONTRACTS.

In several of the cases previously referred to, the court did not pass upon whether or not actual notice to the passenger that the sleeping or palace cars were run by a separate company would have any effect on the liability of the railroad company. In Wood's *Railway Law*, the case of Roy just cited is commented upon, and the writer observes: "From the grounds upon which Harlan, J., placed the liability of the railway company, it is doubtful whether that circumstance would have any influence upon the question of liability. The real ground of liability being the duty which the railway company owes to passengers of running none but sound and sufficient cars, and that by consenting to haul the cars, the passenger has a right to regard it as an assurance by

1, *Pennsylvania R. R. Co. vs. Roy*, 102 U. S., 451 ;

it that the car is safe. It is not believed that notice or knowledge of the real status of the two companies would effect the liability of either."¹ In a foot note he again refers to this case and says: "We have no hesitancy in saying, that in the absence of notice that the company will not be liable for defective appliances in the sleeping car or negligence of servants of the sleeping car company, a passenger may well assume that the train is under one general management. How far a railway company may, by agreement with a sleeping car company, known to the passenger, exonerate itself for liability for such injuries, is a question concerning which we express no opinion."²

DUTY TO RECEIVE PASSENGERS IN SLEEPING CARS.

The considerations of public policy would seem to require that sleeping car companies should receive and accommodate all passengers who are willing to pay the customary charges for lodging, but as these cars occupy an anomalous position, their owners being neither inn-keepers nor common carriers, it is a matter of some doubt whether they are at liberty to refuse to accommodate a passenger or not. In an Illinois case, a *dictum* was expressed that any passenger who applies for a berth, against whom no objection exists, is entitled to have it upon paying, or offering to pay therefor.³ This view is taken by Mr. Wood, who says that the obligation of sleeping car companies grows out of the obligation of the railway company to the traveling public, and of the relation

1, Wood's Railway Law, Vol. III., p. 1443;

2, Wood's Railway Law, Vol. III., p. 1444, note;

3, Nevin vs. Pullman Palace Car Co., 106 Ill., 222;

of the palace car company to the railway company, and that they must be subject to the obligations which the law imposes upon the railway company, in reference to its cars, and the equal accommodations and facilities therein which the railway company is bound to afford its passengers, and the palace car company must be regarded as impliedly contracting that it will be subject to these obligations.¹

In the Illinois case previously referred to, the court held that a sleeping car company, operating and running sleeping cars over railroads, by force of law, independently of contract, owes duties to the public, as a common carrier, one of which is that it shall treat all persons whose patronage it has solicited, with fairness and without unjust discrimination, and is liable for a breach of such duty to the party injured thereby.²

A *dictum* of Judge Sheldon of the Superior Court of Buffalo is to the effect that a sleeping car company cannot be compelled to receive and entertain passengers.³

PASSENGER TRAVELING ON FREE PASS.

The general rule is that a passenger who accepts a free pass from a railway company is bound by its conditions, which usually are that the passenger has no claim against the company for accident or loss. We now have to consider how the relations are changed by the free pass passenger purchasing a ticket for a drawing-room or sleeping car. In a recent case, the plaintiff, who had a free pass, bought a palace car

1, Wood's Railway Law, Vol. III., p. 1450;

2, Nevin vs. Pullman Co., *supra*;

3, Welch vs. Pullman Co., 16 Abb. Pr., 352-7;

ticket, and was injured while riding in this car. The court held that while, if he had been riding in the ordinary cars of the train, he might not have been entitled to maintain his action, yet, by purchasing a palace car ticket and riding on it, he became entitled to the same rights as any other passenger. The court said: "The pass entitled him to ride in one of the common cars of the company, but the plaintiff wished accommodations of a better kind, and therefore he applied for transportation in one of the drawing-room cars that form a part of the defendant's trains. He was accepted as a passenger in the drawing-room car called the 'Empire,' and paid one dollar for transportation in that car to New York. If the free pass gave him the right to travel on the train, *it gave him no right to travel in that car*, and it is evident that the rights and relations of the parties were changed by the sale to him of the ticket for the drawing-room car. He became a passenger for hire. Of that there can be no doubt, nor can there be any doubt that he was at the same time using a free pass. As a passenger for hire, who, in bargaining for transportation in the drawing-room car, had made no contract that relieved the company for its liability for damages if he were injured through its negligence, the plaintiff has all the rights that the law gives to ordinary passengers; and having paid for a ticket he is not to be considered as one who, in consideration of a free pass, has agreed not to hold the company liable for injuries. The defendant voluntarily made a new contract, and cannot now ignore it and insist that the rights of the parties shall be measured by a contract that was intended to operate upon a condition of

affairs that it has seen fit to change. The defendant has taken money from the plaintiff for carrying him, and it has no right to say that he was a free passenger, and to ask the court to incorporate into the drawing-room ticket the provisions of the free pass."¹

OBLIGATIONS OF CARRIER AND PASSENGER.

When a berth in a sleeping car is engaged, the passenger implicitly agrees to conduct himself in a quiet and orderly manner, and to take proper care of the berth while in his possession, and to give up the same at the end of the journey. The company impliedly stipulates to use all reasonable and proper means to preserve order and decorum in the sleeping coaches, to furnish and keep on hand such supplies and conveniences as are usually found in like sleepers, and are necessary to the health, comfort and safety of passengers, and also to permit the passengers to quietly and peaceably occupy the berth for the time engaged.²

ACCIDENTS ON SLEEPING CARS.

Should the upper berth of a sleeper give way, through negligence of the company, and the person occupying the lower berth sustain injuries thereby, the company is liable in damages.³ The company cannot excuse itself from liability by saying that the berth fell by reason of defective manufacture, and that it did not manufacture the sleeping coach in which the accident occurred, for if it purchase its rolling stock from manufacturers, it is responsible for negligence in manufacture to the same extent as

1, Ulrich vs. N. Y. C. R. R. Co., 31 Alb. L. J., 302;

2, Nevin vs. Pullman Co., 106 Ill., 222;

3, DeLong vs. D. L. & W. Co., 37 Hun, 282;

though made in its own shops.¹ If, however, it purchase from reputable car builders, it may assume that the car is in roadworthy condition, if on previous inspection it appears to be so.²

ENDANGERING HEALTH OF PASSENGERS.

In a recent case the plaintiff, a woman, was a passenger in the sleeping car of the defendant, which through defendant's carelessness caught fire. Owing to the smoke and flames, plaintiff, who was not in good health, and was suffering from her monthly sickness, was obliged to leave the car in a half-clad condition, and caught cold, resulting in suppression of the menses and subsequent illness. She brought action against the sleeping car company, and recovered in the trial court. The judgment was reversed on appeal, the court holding that, plaintiff being unwell at the time of the accident, there was that in her then condition, an independent cause of the subsequent illness, which was the remote and not proximate result of illness. The court laid down the rule that persons who are ill have a right to enter cars and hotels, and the carrier company cannot prevent them, but the increased risk arising from conditions of health, affecting their ability for traveling, certainly when unknown to the company, must be assumed by the passenger.³

STATUTORY PROVISIONS.

By Chapter 125 of the Laws of 1858, it is provided:

SECTION 1. Any patentee of a sleeping car, or his

- 1, See 15 Irish Jurist, 71;
- 2, G. R. & I. R. R. Co. vs. Huntley, 38 Mich., 537;
- 3, Pullman Co. vs. Barker, 4 Colorado, 344; but see Ehrgott vs. New York, 96 N. Y., 282;

legal representative, may place his car upon any railroad of this state with the assent of the company owning such road. Such patentee, or his legal representative, may charge for use of said car in all cases, to each passenger occupying the same, forty cents, which sum shall entitle such passenger to the use of a berth for one hundred miles; and the said patentee, or his legal representative, may charge at and after the rate of three mills for every additional mile, but in no case shall the charge exceed eighty cents.

SEC. 2. The railroad companies permitting the use of such cars, shall, nevertheless, keep sufficient first-class cars of other kinds, for the convenient use and occupation of all passengers not wishing to use a sleeping car. And the tickets issued for the use of the sleeping cars, shall have plainly written or printed thereon, "Sleeping Car," and all persons using a sleeping car shall be furnished with such tickets.

SEC. 3. No railroad corporation shall be interested in the additional sums paid for the use of berths in sleeping cars pursuant to the provisions of this act.

SEC. 4. Nothing in this act contained shall be so construed as to exonerate any railroad company from the payment of damages for injuries in the same way and to the same extent they would be required to do by law, if such cars were owned and provided by the company.

SEC. 5. The legislature may alter, amend or repeal this act.

CHAPTER XII.

THE CIVIL DAMAGE ACT.

Among the laws which have been enacted in the State of New York regulating the sale of intoxicating liquors is the statute known as the "civil damage act," constituting Chapter 646, of the Laws of 1873. Its object is to provide a compensation to unfortunate persons who are injured through the acts of intoxicated people by making the vendor of the liquor and the owner of the building in which it is sold liable in damages for any injuries resulting from its sale.

THE NEW YORK STATUTE.

The following is the statute :

SECTION I. Every husband, wife, child, parent, guardian, employer or other person who shall be injured in person or property, or means of support, by any intoxicated person, or in consequence of the intoxication, habitual or otherwise, of any person, shall have a right of action in his or her name, against any person or persons who shall, by selling or giving away intoxicating liquors, caused the intoxication, in whole or in part, of such person or persons, and any person or persons owning or renting or permitting the occupation of any building or premises, and having knowledge that intoxicating liquors are

to be sold therein, shall be liable, severally or jointly with the person or persons selling or giving intoxicating liquors aforesaid, for all damages sustained, and for exemplary damages ; and all damages recovered by a minor under this act shall be paid either to such minor or to his or her parent, guardian or next friend, as the court may direct ; and the unlawful sale or giving away of intoxicating liquors shall work a forfeiture of all rights of the lessee or tenant under lease or contract of rent upon the premises.

SEC. 2. In any action arising for violations of the provisions of this act, any justice of the peace in the county where the offense is committed, shall have jurisdiction to try and determine the same, providing the amount of damages claimed do not exceed \$200 ; in which case, and where the damages claimed do not exceed \$500, the justice of the peace before whom the action is commenced shall associate with himself any other two justices of the peace in the same county, who shall have jurisdiction to try and determine the same.

PRIOR STATUTORY PROVISIONS.

Before the passage of the Civil Damage Act there were several statutes under which damages might be recovered for injuries sustained by a habitual drunkard. Section 28 of Chapter 628 of the Laws of 1857, provided that any person who shall sell any strong or spirituous liquors or wines to any of the individuals to whom it was declared unlawful to make such sale, should be liable for all damages which might be sustained in consequence of such sale, and parties so offending might be sued in any of the courts of this State by any individual sustaining such injuries, or by

the overseers of the poor of the town where the injured party might reside, and the sum received should be for the benefit of the party injured. After notice, in certain cases fifty dollars might be recovered as a penalty, but not as damages. It was held under this statute that damages arising from injuries to property sustained by an habitual drunkard might be recovered from any person unlawfully selling the liquor by means of which the injury arose.¹ By Section 1, III. N. Y. Revised Statutes, 6th Ed., page 732, a right of action was given to the person injured, or after his death to his representative, against a wrong-doer for wrong done the property, rights or interests of the person injured.

CONSTITUTIONALITY OF THE LAW.

The courts have been frequently called upon to decide as to the validity of the Civil Damage statute, and it has been held that the act of 1873 is constitutional,² and that the Legislature has power to create a cause of action for damages in favor of a person injured in person or property by the act of an intoxicated person against the owner of real property whose only connection with the injury is that he leased the premises where the liquor causing the intoxication was sold or given away, with knowledge that the intoxicants were to be sold there.³ The act has been characterized by the courts as both sweeping and severe.⁴

1, Kilburne vs. Coe, 48 Howard, 144;

2, Metropolitan Board of Excise vs. Berrie, 34 N. Y., 657 ; Baker vs. Pope, 2 Hun, 556. s. c.; T. & C., 102 ; Hayes vs. Phelan, 4 Hun, 733; Dubois vs. Miller, 5 Hun, 332; Jackson vs. Brookins 5 Hun, 530 ; Franklin vs. Schemmerhorn, 8 Hun, 112 ; Smith vs. Reynolds, 8 Hun, 128 ;

3, Mead vs. Stratton, 8 Hun, 148 ; Bertholf vs. O'Reilly, 74 N. Y., 509 ;

4, *Idem* ;

PLEADING IN CIVIL DAMAGE CASES.

A complaint under the Civil Damage Act must allege that the husband was an intoxicated person and that the damage sustained was sustained by plaintiff in consequence of the intoxication.¹ Where the complaint alleged that the plaintiff was the wife of A. F. ; that the defendant at the time therein mentioned kept a place in Ogdensburg at which intoxicating liquors were sold ; that on August twentieth, while the defendant was in possession of said premises the plaintiff's husband became intoxicated ; " that said intoxication was caused in whole or in part by intoxicating liquors sold or given away by the said owner, his agents or servants, at and upon said place ;" that while so intoxicated and in consequence thereof her husband was drowned, and by reason thereof the plaintiff was injured in her property and means of support, for which latter she was wholly dependent on the said A. F., it was held on demurrer that the complaint stated a sufficient cause of action.²

Where the complaint alleged that plaintiff's husband came to his death by intoxication, which was caused by liquors which the defendant had sold him, and that by his death the plaintiff had sustained damages in that she was deprived of the companionship of her husband, and of the support and maintenance of herself and children, it was held that this was defective, as not stating a cause of action under the statute of 1873. The court held that the complaint was defective as no injury by an intoxicated person

1, McEntee vs. Spiehler, [N. Y. Common Pleas, 1884.] 12
Daly, 435 ;

2, Ford vs. Ames, 36 Hun, 571 ;

was alleged; that deprivation of companionship is not a ground of action under the Civil Damage Act; no previous loss of means of support was alleged, and stated furthermore that a right of action exists against the vendor or giver of the liquor only in such cases as an action would lie against the intoxicated person.¹ But see the dissenting opinion in this case reported in 5 Hun, 530. It has however been held that it is not essential that a cause of action should be maintainable against the intoxicated person, but that it was sufficient if the wife had been injured in her means of support through the intoxication of her husband.²

The complaint stated that the defendant sold intoxicating liquors to the husband of the plaintiff, which made him intoxicated, and rendered him incapable of labor and of supporting the plaintiff, and so injured him that it caused his death, and that by reason of his death the plaintiff had been injured in property and means of support. The court held that this statement did not constitute a cause of action under the Civil Damage Act.³

ASSIGNMENT OF CAUSE OF ACTION.

When death has been occasioned by the sale to a man of intoxicating liquors, the guardian of his infant children may assign their claim to recover damages under the Civil Damage Act to their mother, who may maintain an action under the said act to recover all the damages sustained.⁴

1, Hayes vs. Phelan, 4 Hun, 733;

2, Quain vs. Russell, 8 Hun, 319; see Mead vs. Stratton, 87 N. Y., 498;

3, Brookwine vs. Monaghan, 15 Hun, 16;

4, Ludwig vs. Gloessel, 34 Hun, 313;

ABATEMENT OF ACTION BY DEATH.

The plaintiff brought an action under the Civil Damage Act to recover damages for loss of means of support, she claiming that her husband's death was the result of intoxication caused by liquors furnished by defendant. Defendant died during the pendency of the action, and his executors were substituted on motion as defendants. This order was appealed from and affirmed at General Term. The defendants, the executors, appealed to the Court of Appeals, which reversed the order on the authority of *Hegerich vs. Keddle*, (99 N. Y., 258,) which holds in effect that the action abates upon the death of the wrong-doer.¹

EVIDENCE IN CIVIL DAMAGE CASES.

Where the only evidence connecting the defendant with the intoxication of the deceased, plaintiff's husband, was the testimony of one L., who testified that two or three weeks before his death he saw deceased drink a glass of ale at defendant's liquor store, and that of a woman who had seen him come out of defendant's store intoxicated two or three days before the decedent's death, and the fact that deceased's hat was left in the store, it was held that this was insufficient to sustain a verdict for the plaintiff, and that a nonsuit was properly ordered. In the opinion of Learned, P. J., he observed: "There must be evidence and not mere conjecture which shall show that acts of the defendant have caused, in whole or in part, the injury which plaintiff has sustained. The mere fact that the defendant sells spirituous liquors, and that the deceased had been seen in defendant's store,

1, *Moriarty vs. Bartlett*, 99 N. Y., 657.

or even had been seen coming from the store in an intoxicated condition, should not make the defendant liable. For a man may keep a liquor store and yet refuse to sell liquor to a drunken man. And unless the man was seen to go in sober and come out drunk, the condition in which he came out would not show where he obtained the liquor."¹

In order to recover under the Civil Damage Act, it is not essential to show that the act of the intoxicated person which caused the injury, was the natural, reasonable, or probable consequence of his intoxication. So when plaintiff's mother was murdered by an intoxicated person, who subsequently committed suicide, the Court of Appeals held that it was sufficient if it appears that the act was done while the person was intoxicated in whole or in part. It does not affect the plaintiff's right of recovery that the act causing the injury constituted a crime.² The license from the Board of Excise to the person who sold the liquor is admissible as evidence to mitigate the damages.³

EXEMPLARY DAMAGES.

In this class of actions under the Civil Damage Act the jury have the right to give exemplary damages, but they should not be allowed in ordinary cases, where nothing is proved but the simple sale of a single glass of liquor under ordinary circumstances. Exemplary damages should only be awarded when there are circumstances of abuse or aggravation proved on the part of the vendors of the liquor.⁴ The Court of

- 1, Lovelan vs. Briggs, 32 Hun, 477;
- 2, New vs. McKechnie, 95 N. Y., 632;
- 3, Quain vs. Russell, 12 Hun, 377;
- 4, Franklin vs. Schemmerhorn, 8 Hun, 112;

Appeals held in 1884 that the jury may properly award exemplary damages when the defendant's sale of liquors was unlawful.¹ The trial court charged that the jury might consider the fact that defendant was selling liquors without a license, as a basis for awarding exemplary damages, and it was held no error that the circumstance that defendant in selling the liquor that produced the intoxication, which occasioned the injury complained of, was acting in open defiance of the law, might furnish a basis for exemplary damages.*

Where an action is brought against the owner of premises by a wife under the Civil Damage Act, to recover damages for injuries sustained by her husband, and by reason of the sale to him of intoxicating liquors by defendant's tenant, exemplary damages cannot be awarded by the jury without proof of aggravating circumstances with which the defendant is connected.³ In this action, Vann, J., laid down the general rule that exemplary damages cannot be maintained in actions brought under the Civil Damage Act, unless it be shown that the defendant acted from bad motives, as, for instance, where it is shown, in an action against one who sold the liquor, that he sold it in violation of law, or to a person whom he knew to be far gone in the habit of intemperance, or who was already obviously under the influence of liquor, or who habitually squandered in dissipation the wages with which he should support his family, or where, in an action against the owner of the premises it is shown that he leased them to a tenant knowing that

1, *New vs. McKechnie*, 95 N. Y., 632;

2, *Davis vs. Standish*, 26 Hun, 615;

3, *Rawlins vs. Vidvard*, 34 Hun, 205;

he kept a disorderly place, or sold without a license, or to minors or habitual drunkards.

EFFECT OF THE ACT.

The Civil Damage Act is not to be given any extra-territorial jurisdiction, and does not apply to an injury caused out of the State by a sale of liquor here. Where the defendant sold liquors to a man in this State who became intoxicated and caused an injury in the State of Vermont, the court held that as there was no allegation or proof of a similar statute in the State of Vermont, the defendant was not liable.¹ The Civil Damage Act is a part of the excise laws of this State.² The effect of this act was to create a new cause of action, and both direct or consequential injuries are included in the remedy given. The words, "means of support," in connection with the designation of the persons in whose favor the remedy is given, denote that it was not alone a common law injury, or an injury before remediable by action, to which the statute was intended to apply.³

ACTIONS BY MINOR CHILDREN.

A recovery was sustained by an infant plaintiff of tender years for the sale of liquors to his father, resulting in intoxication and decreased capacity for labor and means of provision for his family, notwithstanding a previous recovery by the mother of the plaintiff for the same cause. In such a case it is not necessary to join the mother and the other infant

1, Goodwin vs. Young, 34 Hun, 252 ;

2, Franklin vs. Schemmerhorn, 8 Hun, 112 ; Baker vs. Pope, 2 Hun, 556 ;

3, Volens vs. Owen, 74 N. Y., 526 ;

children.¹ In a later case an action was brought by a minor plaintiff, by his mother as general guardian, to recover damages for injury to his means of support, occasioned by the death of his father, by means of intoxicating liquors sold to him by a lessee of defendant. Upon the trial the defendant offered to prove that plaintiff's mother and general guardian had already recovered a judgment against defendant for the sum of \$2,000, for damages sustained by the death of the same party, caused by the same intoxication, and that this sum had been duly paid to her; the court refused to receive the evidence and on appeal it was decided that this evidence was properly excluded as no claim was made for exemplary damages.²

WHEN THE ACTION WILL NOT LIE.

There are many instances where, although a cause of action would seem to exist, yet it will not meet the requirements of the statute, and the practitioner must exercise great caution and deliberation in bringing actions under this act. It will be necessary to analyze each particular case in order to see if it contains the necessary facts to sustain a verdict. While the preliminary object of the legislature, in enacting this statute, was to protect the dependent and helpless, it must appear affirmatively that the party seeking relief properly belongs to this class. Accordingly when an action was brought for loss of services of plaintiff's minor son, and for medical expenses and other disbursements, the court held that plaintiff was not entitled to recover in absence of any proof that the services referred to in the complaint were neces-

1, Mullen vs. Christain, 22 N. Y. Weekly Dig., 59;

2, Secor vs. Taylor, 41 Hun, 123;

sary to his support, or that the charge brought upon him diminished his means so as to render them inadequate therefor.¹

In the case last referred to the court stated that a diminution of income or loss of property does not constitute an injury to means of support within the fair intendment of the statute, if the plaintiff, notwithstanding, has adequate means of maintenance from accumulated capital or property, or if his remaining income is sufficient to support him. The court reversed the same case reported in 9 Hun, 558.

In a recent case the son of the plaintiff, who was thirty-one years old, lost both legs through an accident, occurring by reason of his intoxication. In an action under the Civil Damage Act, which provides that a parent injured in his means of support in consequence of the intoxication of his child, shall have a right of action for damages, it was held that in order to recover it was insufficient for the parent to show a diminution of his income or a loss of his property; it is necessary further to show that he is a poor person and has no other means of support.²

It seems that if the plaintiff had consented and aided the intoxicated person in obtaining the liquor which made him intoxicated and produced the injury, that no action would lie, and in an action under the act of 1873, brought by a wife for injuries sustained by her husband through intoxication by liquors sold by the defendant, it was held error to refuse to charge the jury that if plaintiff had consented and contributed to the use of liquors by her husband, she was not

1, Volens vs. Owens, 74 N. Y., 530;

2, Stevens vs. Cheney, 36 Hun, 1;

entitled to recover.¹ Where the plaintiff, a wife, failed to give evidence on the trial of any specific act done, or omitted by her husband, while in a state of intoxication, which injured the plaintiff in her person or estate, or deprived her of any means of support, it was held that she could not recover.² It has been held that the death of the husband alone does not give a right of action, the court deciding that no matter how great the injury may be in other respects, or how much suffering may be entailed by reason of the intoxication, if the person be not injured in person or property, or means of support, no action can be maintained.³

WHEN THE ACTION LIES.

It is not necessary that the intoxication complained of be the direct result of the liquor sold by defendant. The defendant is made responsible for acts affecting the person, property or means of support in consequence of the intoxication in whole or in part.⁴ The court observed in another case: "If the injury which had resulted to the deceased in consequence of his intoxication, had disabled him for life, or to such an extent as to incapacitate him for labor, and for earning a support for his family, it would no doubt be embraced within the meaning and intent of the statute. That death ensued in consequence thereof, furnishes much stronger ground for a claim for a loss of means of support."⁵ Where a woman is thrown out of a wagon and severely injured by reason of negligence

- 1, Elliott vs. Barry, 34 Hun, 129 ;
- 2, March vs. Mabbitt, 3 Weekly Dig., 126 ;
- 3, Brookwine vs. Monaghan, 15 Hun, 16 ;
- 4, Becker vs. Barnum, 19 Weekly Dig., 94 ; •
- 5, Mead vs. Stratton, 87 N. Y., 493 ;

of a driver who is intoxicated, her husband may maintain an action for loss of his wife's services, and for medical attendance, against the person selling the liquor to the driver.¹ Where a man, while intoxicated, upsets a wagon which he is driving, which accident is caused by reason of his intoxication, his wife may maintain an action against the person who sold the liquor to her husband, and may recover for injuries and pain endured.² Where plaintiff's son became intoxicated and overdrove his horse so that it died, it was held that the plaintiff could maintain an action for its value against the owner of the building where the liquor was sold and his lessee who sold it. It was further held that because the father knew his son to be of intemperate habits, he was not guilty of contributory negligence in allowing him to drive the horse, and that the fact that the horse was being used on Sunday was no reason why plaintiff should not recover.³ It has also been held that if the liquor sold by defendant was the proximate cause of decedent's death, it would sustain a recovery, and the jury, in their estimate of damages, might consider the expectancy of life of plaintiff and this decedent, her husband, basing their calculations upon the Northampton tables.⁴

It is held that a man who sells liquor to another is not protected from his liability because he does not at the time the liquor is sold, contemplate that it will lead the man into circumstances where he is liable to

1, Aldrich vs. Sager, 4 Weekly Dig., 111; s. c., 9 Hun, 537;

2, Relyea vs. Norris, 5 Weekly Dig., 343;

3, Bertholf vs. O'Reilly, 8 Hun, 16;

4, Davis vs. Standish, 26 Hun, 608;

lose his life.¹ The statutory liability rests on every person who has contributed to the intoxication by selling liquor, as well upon those who sell with, as those who sell without a license.² The Civil Damage Act is not in conflict with the excise laws which allow the vendor to take out a license. It does not forbid the sale of liquor, but makes the vendor liable for the consequences of the sale. It imposes upon the vendor of the liquor the duty to so guard his conduct that it will produce no mischievous results. The license from a board of excise is no bar to an action under the Civil Damage Act.³ The supplying of liquor to a person who is afterwards injured, by a bartender without the knowledge or authority of his employers, and against their orders, does not exempt the employers from liability; they are liable for the acts of their agent in the business of his agency.⁴

THE OWNER OF PREMISES.

The statute imposes the same liability for damages upon the owner of the premises where the liquor is sold, as upon the lessee who sells the liquor. This is a salutary provision, and tends to make the owners of property exceedingly careful about the persons whom they admit into their premises, as tenants. It will be observed that the landlord is not liable unless he had knowledge that intoxicating liquors were to be sold in the demised premises. The owner has, by the statute, a remedy, if he finds his tenant is violating the law, as it is provided that the unlawful sale

1, Davis vs. Standish, 26 Hun, 612 ;

2, Baker vs. Pope, 2 Hun, 556 ;

3, Quain vs. Russell, 12 Hun, 376 ;

4, Smith vs. Reynolds, 8 Hun, 128 ;

or giving away of intoxicating liquors shall work a forfeiture of all rights of the lessee or tenant under any lease or contract of rent upon the premises. The landlord has a great responsibility under this statute; he must see that the persons whom he permits to carry on the liquor traffic upon his premises, conduct their business in a lawful manner, and that they do not sell to intoxicated persons, habitual drunkards, etc. The landlord assumes a liability for the injuries caused by unlawful acts of his tenant when he leases premises to him for the purpose of selling liquor therein. The owner of the premises is not without protection; he can refuse to rent his property to any one who he has reason to believe will sell liquor in an injurious manner, or when he finds his tenant is violating the excise laws, he can terminate the lease. The statute compels the owner of the premises to be vigilant and careful regarding his tenants who are engaged in the business of selling liquor, and have the means at hand to produce so much injury by selling intoxicants to persons who ought not to be allowed to have access to them.

We have already seen that the owner of the premises cannot be held liable for exemplary damages without proof of aggravating circumstances with which he is connected.¹ The courts have held that the statutory liability of the owner may be imposed irrespective of whether the sale or giving away of the liquor was or was not lawful, or of the question of negligence on the part of the tenant.² When vendor's wife was the owner of the premises, and had

1, *Rawlins vs. Vidvard*, 34 Hun, 205;

2, *Bertholf vs. O'Reilly*, 74 N. Y., 509;

taken title and possession before the passage of the Civil Damage Act, it was found that she knew intoxicating liquors were sold on the premises, although she did not have charge of the bar, and it was held that because she had taken possession before the law went into effect, she was not exempt from responsibility on that account; the presumption was that the position originally taken was continued in view of the laws of the State thereafter enacted. It was also held proper to submit to the jury the question whether she had given permission for the occupation of the building with knowledge that liquor was to be sold on the premises.¹ The action may be brought jointly against the landlord and the lessee who sold the liquor which produced the intoxication.²

JOINDER OF DEFENDANTS.

It is improper to join as defendants in the same action two or more persons who, separately, at different times, sold liquor to the same person, each quantity of liquor sold contributing to produce the intoxication resulting in the injury.³ In this case plaintiff sued jointly two vendors of intoxicating liquors and the landlord of one of them, charging in her complaint sales on the same day to her husband, the liquors sold by each contributing to produce his intoxication; her husband afterwards engaged in an altercation and was killed. The defendants demurred that they were sued jointly and the court sustained the demurrer, holding that a cause of action was stated against one vendor, and another cause against the

1, Mead vs. Stratton *et al.*, 87 N. Y., 493;

2, Jackson vs. Brookins, 5 Hun, 530;

18 3, Jackson vs. Brookins, *supra*;

other vendor and his landlord jointly, but that a joint action would not lie against the three persons. The court stated it did not feel called upon to decide whether more than one action would lie in favor of the plaintiff, leaving that point in some obscurity. In another case the action was brought jointly against two vendors, charging a conspiracy. The court held that two separate sales by defendants severally, did not uphold an allegation of joint sale by them.¹

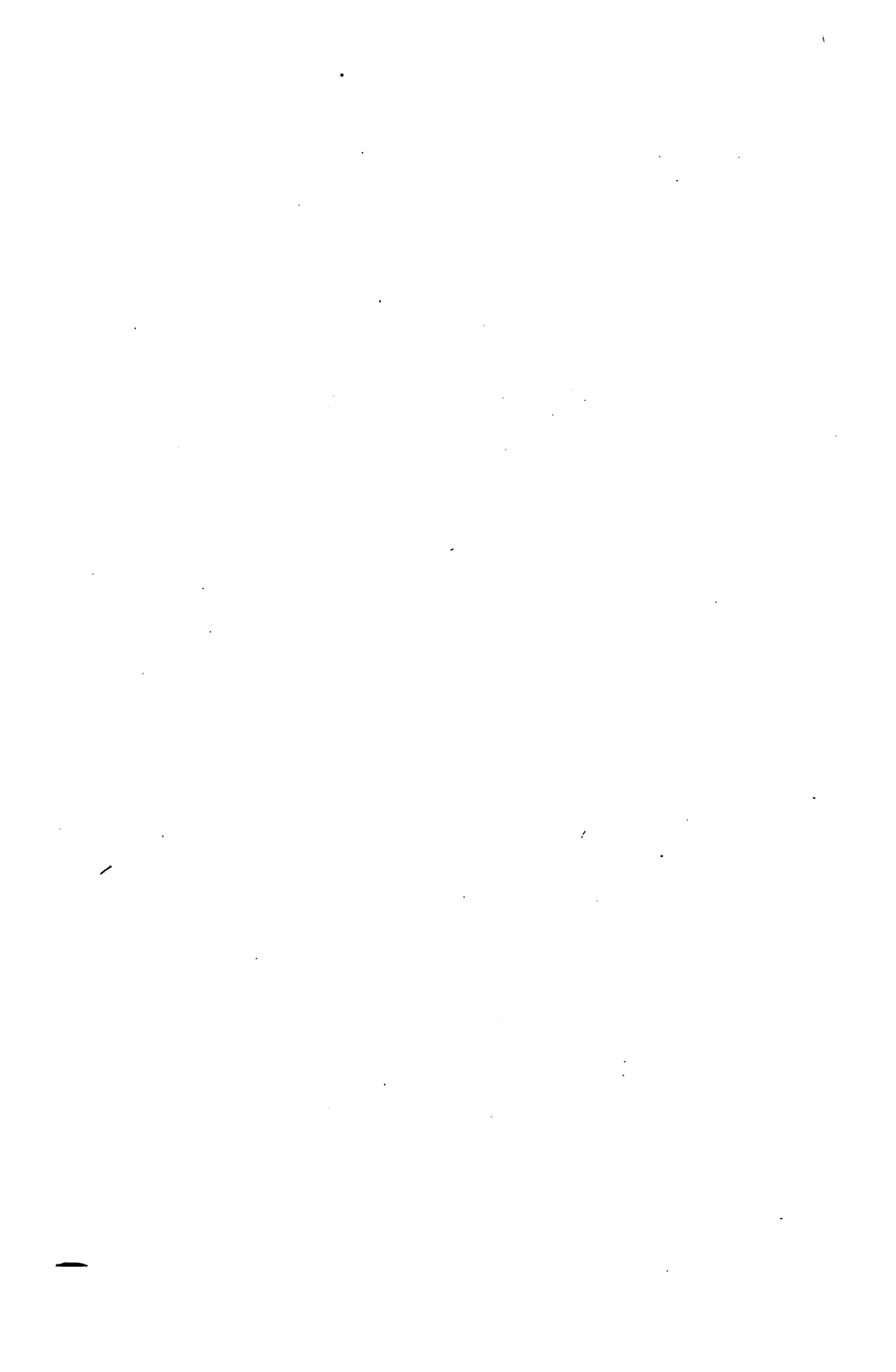
LIABILITY FOR HARBORING DRUNKARDS.

A case was recently decided in the Superior Court of Pennsylvania which may have some bearing in determining the liability of liquor sellers under the Civil Damage Act. It appeared from the evidence that plaintiff, a minor, entered defendant's tavern, and there found one Flanagan. They both became intoxicated on liquor furnished by defendant. While plaintiff was standing on the outside of the bar engaged in conversation with the defendant who was inside the counter, Flanagan pinned a piece of paper on plaintiff's back and set fire to it, burning plaintiff's clothing nearly off, and seriously injuring him before the flames could be extinguished. The plaintiff then brought action against the tavern keeper to recover damages for the injuries sustained by the burning. The trial court directed a judgment for nonsuit, from which plaintiff appealed. The appellate court reversed the judgment and granted a new *venire*. In the opinion of Gordon, J., he said: "There is no doubt that the defendant, from the position he occupied, had a full view of the room outside the bar, and

1, *Morenus vs. Crawford*, 15 Hun, 45 ;

did see, or might have seen, all that was going on in it. If, in fact, he did see Flanagan setting fire to the plaintiff, and did not interfere to protect his guest from so flagrant an outrage, his responsibility for the consequences is undoubted. If, on the other hand, he was guilty of making Flanagan drunk, or if he came there drunk, and Schambacher knew that fact, he was bound to see that he did no injury to his customers. All this is a plain matter of common law and good sense, and does not depend on the act of 1854, or any other statute. Where one enters a saloon or tavern, opened for the entertainment of the public, the proprietor is bound to see that he is properly protected from the assaults or insults, as well as of those who are in his employ, as of those drunken and vicious men whom he may choose to harbor. To illustrate the principle here stated, we need go no further than the case of the *Pittsburg and Connellsville R. R. Co. vs. Pillow*, 76 Penn. St., 510. In the case cited a drunken row occurred on board of one of defendant's cars, and during the quarrel a bottle was broken and a piece of glass struck the plaintiff, a peaceful passenger, in the eye and put it out; held that the company was responsible for the injury thus done. * * * If thus a railroad company is liable for the conduct of drunken men who may chance to board its cars, much more the tavern keeper, who not only permits drunken men about his premises, but furnishes liquor to make them drunk, and who is thus instrumental in fitting them for the accomplishment of such an insane and brutal trick as that disclosed by the evidence of the case in hand."¹

1. Rommell vs. Schambacher, 36 Alb. L. Js. 342;



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